



COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS	REDEVELOPMENT AGENCY
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Mark Grzan, Mayor Pro Tempore	Mark Grzan, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member
Steve Tate, Council Member	Steve Tate, Agency Member

WEDNESDAY, JULY 19, 2006

AGENDA

JOINT MEETING

CITY COUNCIL REGULAR AND SPECIAL MEETING

and

REDEVELOPMENT AGENCY REGULAR MEETING

6:00 P.M.

A Special Meeting of the City Council is Called at 6:00 P.M. for the Purpose of Conducting a Closed Session.

Dennis Kennedy, Mayor

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

6:00 P.M.

City Council Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Government Code Section 54956.9(a)
Case Name:	Arcadia Development Company v. City of Morgan Hill
Case Number:	County of Santa Clara No. 1-04-CV-020598.
Attendees:	City Manager; City Attorney; Special Counsel Ellison Folk

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

RECOGNITIONS

CITY COUNCIL REPORT

Mayor Pro Tempore Grzan

CITY COUNCIL COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY
COUNCIL/REDEVELOPMENT AGENCY.**

City Council and Redevelopment Agency Action

ADOPTION OF AGENDA

City Council Action

CONSENT CALENDAR:

ITEMS 1-17 The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

1. [**DONATION FROM HOSPIRA, INC.**](#).....9
Recommended Action(s):
1. **Accept** the Donation; and
2. **Appropriate** the Donated Funds in the 2006-2007 Budget.
2. [**CENTENNIAL RECREATION CENTER PROJECT – JUNE CONSTRUCTION PROGRESS REPORT**](#)11
Recommended Action(s): Information only.
3. [**NEW LIBRARY PROJECT – JUNE CONSTRUCTION PROGRESS REPORT**](#).....12
Recommended Action(s): Information only.
4. [**FOURTH AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF SHUTE, MIHALY, AND WEINBERGER, LLP**](#).....13
Recommended Action(s): Authorize the City Manager to Execute a Fourth Amendment to Agreement with the Law Firm of Shute, Mihaly, and Weinberger, LLP.

	Time Estimate	Page
	Consent Calendar: 1 - 10 Minutes	
5.	<u>SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, MCCLURE & FLEGEL, LLP</u>14 <u>Recommended Action(s):</u> Authorize the City Manager to Execute a Second Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.	
6.	<u>FIFTH AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, MCCLURE & FLEGEL, LLP</u>15 <u>Recommended Action(s):</u> Authorize the City Manager to Execute a Fifth Amendment to Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.	
7.	<u>ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9680, COYOTE ESTATES PHASE 10</u>16 <u>Recommended Action(s):</u> 1. Adopt Resolution Accepting the Subdivision Improvements Included in Tract 9680, Commonly Known as Coyote Estates Phase 10; and 2. Direct the City Clerk to File a Notice of Completion with the County Recorder's Office.	
8.	<u>JUNE 6, 2006 SPECIAL MUNICIPAL ELECTION – CERTIFIED STATEMENT OF ELECTION RESULTS</u>19 <u>Recommended Action(s):</u> Adopt Resolution Reciting the Facts of the Special Municipal Election of June 6, 2006.	
9.	<u>APPROVE WATER METER SOLE SOURCE PURCHASE</u>20 <u>Recommended Action(s):</u> Approve Purchase Order of \$399,300 for Fiscal Year 2006-2007 to Sensus Metering Systems for the Annual Supply of Water Meters, Meter Parts, and MXUs (Radio Transmitters).	
10.	<u>FINAL MAP APPROVAL VIENTO PHASE I (TRACT 9791)</u>21 <u>Recommended Action(s):</u> 1. Approve the Final Map, Subdivision Improvement Agreement and Improvement plans; 2. Authorize the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; Subject to Review by the City Attorney; and 3. Authorize the Recordation of the Final Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.	
11.	<u>APPROVE SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 28, 2006</u>22	
12.	<u>APPROVE SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 29, 2006</u>24	
13.	<u>ADOPT ORDINANCE NO. 1781, NEW SERIES</u>25 <u>Recommended Action(s):</u> Waive the Reading, and Adopt Ordinance No. 1781, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-1 7,000/RESIDENTIAL PLANNED DEVELOPMENT ON A 9.97 ACRE SITE LOCATED ON THE SOUTH SIDE OF EAST MAIN AVENUE APPROXIMATELY 400 FEET EAST OF THE CALLE MAZATAN/EAST MAIN INTERSECTION. (APN 726-16-028) (ZA-05-05: EAST MAIN-MARRAD).	

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

14. [**ADOPT ORDINANCE NO. 1782, NEW SERIES**](#)29
Recommended Action(s): Waive the Reading, and Adopt Ordinance No. 1782, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-04 FOR APPLICATION MP 04-19: EAST MAIN-THRUST (APN 726-16-028) (DA-05-04: E. Main-Marrad).**

15. [**ADOPT ORDINANCE NO. 1783, NEW SERIES**](#)33
Recommended Action(s): Waive the Reading, and Adopt Ordinance No. 1783, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 835, NEW SERIES, SECTION II A. 2, ELIMINATING THE EXCLUSION OF GROCERY SUPERMARKETS FROM THE LIST OF PERMITTED USES ALLOWED WITHIN THE PORTION OF THE MORGAN HILL BUSINESS PARK ZONED COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD). (ZA-05-30: City of Morgan Hill-Cochrane Plaza).**

16. [**ADOPT ORDINANCE NO. 1784, NEW SERIES**](#)36
Recommended Action(s): Waive the Reading, and Adopt Ordinance No. 1784, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A THREE MONTH EXTENSION OF TIME FOR COMMENCEMENT OF CONSTRUCTION FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APNS 817-11-067 & 817-11-072) (DAA-04-09: E. Dunne-Delco).**

17. [**ADOPT ORDINANCE NO. 1785, NEW SERIES**](#)41
Recommended Action(s): Waive the Reading, and Adopt Ordinance No. 1785, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1738, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-22 AND MC-04-13: BARRETT-ODISHOO ALLOWING FOR A FIVE MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A FOUR MONTH EXTENSION TO COMMENCEMENT OF CONSTRUCTION OF 5 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APN 817-33-003) (DAA-04-05: Barrett-Odishoo).**

Redevelopment Agency Action

CONSENT CALENDAR:

ITEM 18

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

18. [AGREEMENT FOR OUTSIDE LEGAL COUNSEL, RICHARDS, WATSON & GERSHON](#).....47
Recommended Action(s): Authorize Executive Director to Execute Consultant Agreement for Legal Services in Fiscal Year 2006-2007 with Richards, Watson & Gershon in the Amount of \$80,000; Subject to Review and Approval by Agency Counsel.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

ITEM 19

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

19. [APPROVE JOINT SPECIAL AND REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 28, 2006](#).....48

City Council Action

PUBLIC HEARINGS:

Time Estimate

Page

20. 10 Minutes [ZONING AMENDMENT, ZA-05-09/DEVELOPMENT AGREEMENT, DA-05-08: CHURCH-ALCINI](#).....73
Public Hearing Opened.
Please Limit Your Remarks to 3 Minutes. Public Hearing Closed
Council Discussion.
Action- **Approve** Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
Action- **Motion to Waive** the Reading in Full of the Zoning Amendment Ordinance.
Action- **Motion to Introduce** Ordinance by Title Only. (Roll Call Vote)
Action- **Motion to Waive** the Reading in Full of Development Agreement Ordinance.
Action- **Motion to Introduce** Ordinance by Title Only. (Roll Call Vote)

PUBLIC HEARINGS:

	Time Estimate		Page
21.	60 Minutes	<u>ZONING AMENDMENT AND SITE REVIEW APPLICATIONS ZAA-03-03/SR-06-03: FOOTHILL-THE INSTITUTE</u>	99
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <u>Adopt</u> Environmental Impact Report (EIR) Addendum.	
		Action- <u>Motion to Waive</u> the First and Second Reading of the Ordinance.	
		Action- <u>Motion to Introduce</u> Ordinance, Amending a Planned Unit Development Zoning and Precise Development Plan for the Subject Parcels by Title Only. (Roll Call Vote)	
		Action- <u>Adopt</u> Resolution Approving a Site Review Permit and an Exception to the Underground Utility Requirement.	
22.	20 Minutes	<u>GENERAL PLAN AMENDMENT, GPA-01-09: CITY OF MORGAN HILL-ADOPTION OF HOUSING ELEMENT UPDATE</u>	112
		Public Hearing Opened.	
		Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
		Council Discussion.	
		Action- <u>Adopt</u> Negative Declaration.	
		Action- <u>Adopt</u> Resolution.	

City Council Action

OTHER BUSINESS:

	Time Estimate		Page
23.	10 Minutes	<u>CITY MANAGER'S AMENDED AND RESTATED EMPLOYMENT AGREEMENT</u>	115
		<u>Recommended Action(s):</u>	
		1. <u>Approve</u> the Amended and Restated Employment Agreement Between the City of Morgan Hill and J. Edward Tewes;	
		2. <u>Authorize</u> the Mayor to Execute the Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney; and	
		3. <u>Appropriate</u> an Additional \$9,000 for City Manager's Office Budget.	

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

PUBLIC COMMENTS ON ITEMS *NOT* APPEARING ON AGENDA

Following the opening of Council/Agency business, the public may present comments on items *NOT* appearing on the agenda that are within the Council's/Agency's jurisdiction. Should your comments require Council/Agency action, your request will be placed on the next appropriate agenda. No Council/Agency discussion or action may be taken until your item appears on a future agenda. You may contact the City Clerk/Agency Secretary for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your presentation to three (3) minutes.

PUBLIC COMMENTS ON ITEMS APPEARING ON AGENDA

The Morgan Hill City Council/Redevelopment Agency welcomes comments from all individuals on any agenda item being considered by the City Council/Redevelopment Agency. Please complete a Speaker Card and present it to the City Clerk/Agency Secretary. This will assist the Council/Agency Members in hearing your comments at the appropriate time. Speaker cards are available on the table in the foyer of the Council Chambers. In accordance with Government Code 54953.3 it is not a requirement to fill out a speaker card in order to speak to the Council/Agency. However, it is very helpful to the Council/Agency if speaker cards are submitted. As your name is called by the Mayor/Chairman, please walk to the podium and speak directly into the microphone. Clearly state your name and address and then proceed to comment on the agenda item. In the interest of brevity and timeliness and to ensure the participation of all those desiring an opportunity to speak, comments presented to the City Council/Agency Commission are limited to three minutes. We appreciate your cooperation.

NOTICE

AMERICANS WITH DISABILITIES ACT (ADA)

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City. If you need special assistance to access the meeting room or to otherwise participate at this meeting, including auxiliary aids or services, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation. Please make your request at least 48 hours prior to the meeting to enable staff to implement reasonable arrangements to assure accessibility to the meeting.

If assistance is needed regarding any item appearing on the City Council/Agency Commission agenda, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation.

NOTICE

Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council/Agency Commission at, or prior to the Public Hearing on these matters.

NOTICE

The time within which judicial review must be sought of the action by the City Council/Agency Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

DONATION FROM HOSPIRA , INC.

RECOMMENDED ACTION(S):

Accept the donation.

Appropriate the donated funds in the 2006/2007 Budget

EXECUTIVE SUMMARY: Hospira, Inc., one of the City's largest employers, has a long history of civic involvement and community care. The corporation brought their numerous volunteers to beautify Paradise Park during May's City Beautification Day. In addition to the large number of participants, their effort stood out for the large number of family members participating and the special t-shirts they created for the day.

In addition to their invaluable labor contribution, Hospira would also like to make a cash donation to the City's beautification efforts. Their \$2,500 donation will help offset the costs of the 2007 City Beautification Day.

Staff recommends that the Council accept the donation and appropriate the funds in the 2006/2007 Budget.

FISCAL/RESOURCE IMPACT: This donation will add \$2,500 to 232.5800.42248 which will be used for the purchase of parks maintenance supplies. Attached is a budget scorecard recording the impact of this change.

Agenda Item # 1

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

AGENDA BUDGET SCORECARD**FISCAL 2006/07****Adjustment #:**

001

FUND:**DEPARTMENT:****OBJECT****PROJECT NUMBER:**

232	Solid Waste
5800	Solid Waste Mgmt
42248	Other Supplies
000000	-

AGENDA DATE:**AGENDA ITEM TITLE:**

07/19/06
Donation From Hospira for 2007 Beautification Day

	07/01/06 BEGINNING FUND BALANCE	ESTIMATED REVENUES	APPROPRI- ATIONS	06/30/07 ENDING FUND BALANCE
ORIGINAL BUDGET	834,848.00	456,661.00	567,220.00	724,289.00
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	2,500.00	2,500.00	
RESULT OF RECOMMENDED ACTION	<u>834,848.00</u>	<u>459,161.00</u>	<u>569,720.00</u>	<u>724,289.00</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

CENTENNIAL RECREATION CENTER PROJECT – JUNE CONSTRUCTION PROGRESS REPORT

RECOMMENDED ACTION(S): *Information Only*

EXECUTIVE SUMMARY:

Previous Council action awarded the contract for construction of the Centennial Recreation Center Project to West Coast Contractors, Inc. At that time, staff informed Council that we would report monthly on the progress of the construction. Attached is the progress report for the month of June. This report has been sent to our webmaster for posting on the City's website. Current construction activity can be viewed live on the internet at www.novapartners.com/mhirc.

Progress on the construction is continuing to go very well. The locker rooms have drywall installed and the contractor is preparing for tile. Most of the pool tile and mechanical equipment is completed ready for plaster and equipment start up later this month or early next. The contractor is still attempting to make up as much time as possible from previous weather delays. Barring any unforeseen circumstances, the anticipated Grand Opening has been set at October 28th, 2006. The project is currently within budget.

FISCAL/RESOURCE IMPACT: None

Agenda Item # 2

Prepared By:

Sr. Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

NEW LIBRARY PROJECT – JUNE CONSTRUCTION PROGRESS REPORT

RECOMMENDED ACTION(S): *Information Only*

EXECUTIVE SUMMARY:

Previous Council action awarded the contracts for construction of the New Library to 19 different prime contractors. At that time, staff informed Council that we would report monthly on the progress of the construction. Attached is the progress report for the month of June. This report has been sent to our webmaster for posting on the City's website. Current construction activity can also be viewed live on the internet at www.tbionline.com/tbicons/projects.htm.

The permanent subdrain system continues working well to remove the high groundwater beneath the site. Unfortunately, it does not dry the over saturated surface soils as a result of the late spring rains. Consequently, additional effort was expended to disc and mix wet soil with dry soil to obtain proper earthwork compaction. This has cost an additional \$37K of contingency funds with an additional 11 day impact to the project schedule. Barring any unforeseen circumstances, the anticipated substantial completion date has been pushed back to May 8, 2007. The grand opening date depends upon the County moving into the building, and is tentatively scheduled approximately six weeks later. The project is currently within budget.

FISCAL/RESOURCE IMPACT: None

Agenda Item # 3

Prepared By:

Sr. Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

FOURTH AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF SHUTE, MIHALY, & WEINBERGER, LLP

RECOMMENDED ACTIONS:

Authorize the City Manager to execute a Fourth Amendment to Agreement with the law firm of Shute, Mihaly, & Weinberger, LLP.

EXECUTIVE SUMMARY:

On September 8, 2004, the City entered into a contract with the law firm of Shute, Mihaly, & Weinberger, LLP, to defend the City in an action filed by Arcadia Development Company. The contract amount of \$20,000 covered fees and costs to and including the hearing on the City's demurrer. The demurrer was denied by the court. On April 6, 2005, the City Council approved an amendment to the agreement increasing the contract amount to \$65,000 to cover the fees and costs associated with the preparation and review of the administrative record and continuing defense of this lawsuit.

It is anticipated that an additional \$100,000 will be necessary to complete and lodge the administrative record, attend depositions and prepare, respond and appear at a motion for summary judgment. Staff recommends that Council approve the attached Fourth Amendment to Agreement in the amount of \$165,000.

FISCAL IMPACT:

The cost of this Fourth Amendment to Agreement can be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.

Agenda Item # 4

Prepared By:

(Title)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 5

Prepared By:

(Title)

Submitted By:

City Manager

SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP

RECOMMENDED ACTIONS:

Authorize the City Manager to execute a Second Amended Agreement with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP.

EXECUTIVE SUMMARY:

On August 24, 2005, the City entered into a contract in the amount of \$20,000 with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP, for legal services relating to land use and development issues regarding the DiNapoli shopping center project. On January 11, 2006, the City Council approved an amendment to the agreement increasing the contract amount to \$37,500.

Currently, attorney Margaret A. Sloan is preparing, reviewing and assisting with negotiations of the various agreements necessary for the development of this project. It is anticipated that an additional \$10,000 will be sufficient to cover the projected fees and costs for finalizing the agreements and continual monitoring of this project through completion. Therefore, staff is recommending that Council approve the attached Second Amendment to Agreement increasing the contract amount to \$47,500.

FISCAL IMPACT:

The cost of this Second Amendment to Agreement will be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 6

Prepared By:

(Title)

Submitted By:

City Manager

FIFTH AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP

RECOMMENDED ACTIONS:

Authorize the City Manager to execute a Fifth Amendment to Agreement with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP.

EXECUTIVE SUMMARY:

On April 26, 2005, the City entered into a contract with Jorgenson, Siegel, McClure & Flegel, LLP, in the amount of \$40,000 to cover legal fees and costs related to the City's defense and preliminary discovery in an action filed by Judith L. Berkman, A. William Berkman, Marcia Schneider, Kenneth Schneider and Ralph Heron.

On June 17, 2005, the contract amount was increased to \$103,000 to cover the fees and costs associated with preparing an opposition to and appearance at plaintiffs' motion for summary adjudication, continuing discovery, preparing responses to and appearances at plaintiffs' motion for reconsideration of summary adjudication and preparing for and attending non-binding mediation held in November 2005. The parties were unable to reach a settlement at the mediation and the matter proceeded to trial on April 12, 2006. On March 27, 2006, the contract amount was increased to \$253,000 to cover the anticipated pretrial and trial fees and costs.

At the conclusion of the evidentiary portion of the trial, the parties were instructed to submit supplemental argument briefs. Following submission of the briefs, the court or either party may request oral argument. It is anticipated that an additional \$75,000 will be necessary to cover the fees and costs associated with preparation of the argument briefs and preparation and attendance at oral argument. Therefore, staff is recommending that Council approve the attached Fifth Amendment to Agreement increasing the contract amount to \$328,000.

FISCAL IMPACT:

The cost of this Fifth Amendment to Agreement will be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9680, COYOTE ESTATES PHASE 10

RECOMMENDED ACTION(S):

1. Adopt the attached resolution accepting the subdivision improvements included in Tract 9680, commonly known as Coyote Estates Phase 10.
2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

Tract 9680 is a 19 lot subdivision located on the north side of Cochrane Road within the Coyote Estates subdivision (see attached location map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvement Agreement between the City of Morgan Hill and Coyote Estates 2004 Inc., dated June 1, 2005 and as specifically set forth in the plans and specifications approved by the City.

The streets to be accepted are:

<u>Street Name</u>	<u>Street Length</u>
Painted Feather Court	0.07miles
Red Tail Court	0.04miles
Windsong Court	0.04 miles

The value of the public improvements being accepted is \$322,220.

FISCAL/RESOURCE IMPACT: Staff time for this project was paid for by development fees.

Agenda Item # 7

Prepared By:

Senior Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ACCEPTING THE SUBDIVISION
IMPROVEMENTS FOR TRACT 9680, COYOTE ESTATES PH. 10**

WHEREAS, the owner of Tract 9680, designated as Coyote Estates Ph. 10, entered into a Subdivision Improvement Agreement on June 1, 2005 and

WHEREAS, Jim Ashcraft, City Engineer, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said subdivision.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Subdivision Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance provisions referred to in Paragraph 10 of the Subdivision Improvement Agreement of June 1, 2005
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the subdivision public improvements.
4. If requested by the developer or subdivider, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED this 19th day of July, 2006.

AYES:
NOES:
ABSTAIN:
ABSENT:

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. adopted by the City Council at the Regular City Council Meeting of July 19, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION

CITY OF MORGAN HILL

TRACT 9680, COYOTE ESTATES PH. 10

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, signed below, represents the City of Morgan Hill as the owner of the public improvements for the above named development. Said improvements were substantially completed on June 28, 2006, by Coyote Estates 2004 Inc., the subdivider of record and accepted by the City Council on July 19, 2006. Said improvements consisted of public streets, utilities and appurtenances.

The name of the surety on the contractor's bond for labor and materials on said project is Developers Surety and Indemnity Company.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2006.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

JUNE 6, 2006 SPECIAL MUNICIPAL ELECTION - CERTIFIED STATEMENT OF ELECTION RESULTS

RECOMMENDED ACTION:

Adopt Resolution Reciting the Facts of the Special Municipal Election of June 6, 2006.

Agenda Item # 8

Prepared By:

**Council Services &
Records Manager/
City Clerk**

Submitted By:

City Manager

EXECUTIVE SUMMARY:

A Special Municipal Election was held on Tuesday, June 6, 2006 to allow the voters of Morgan Hill to vote on a Ballot Measure – Measure H, Asking the Citizens of Morgan Hill whether Ordinance No. 835, N.S. Section II A.2, regarding the portion zoned PUD-Commercial of the Morgan Hill Business Park, specifically, the existing Cochrane Plaza shopping center, be amended to remove the prohibition on grocery supermarkets and to add grocery supermarkets as a permitted use. Pursuant to Elections Code Section 10262, a resolution reciting the facts of the Special Municipal Election will need to be adopted by the City Council. The Santa Clara County Registrars of Voters has concluded canvassing the election returns and have issued a Certified Statement of Election Results (attached as Exhibit “A”).

On June 28, 2006, the City Council introduced Ordinance No. 1783, New Series. This ordinance amends Ordinance No. 835, Section II A.2, regarding that portion zoned PUD-Commercial of the Morgan Hill Business Park, specifically the existing Cochrane Plaza shopping center. The ordinance removes the prohibition of grocery supermarkets and adds grocery supermarkets as a permitted use(s). Ordinance No. 1783, New Series, is scheduled for adoption by the Council on July 19, 2006, and coincides with the Certification of the June 6, 2006 election results.

FISCAL IMPACT: The City of Morgan Hill has been invoiced in the amount of \$24,289 for the Special Municipal Election. There are sufficient funds in the budget (010-42231-2420) to pay for the contract services charged by the Registrar of Voters Office.



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

APPROVE WATER METER SOLE SOURCE PURCHASE

RECOMMENDED ACTION:

Approve purchase order of \$399,300 for Fiscal Year 2006-07 to Sensus Metering Systems for the annual supply of water meters, meter parts and MXUs (Radio Transmitters)

EXECUTIVE SUMMARY: Currently there are approximately 11,500 water meter service connections City-wide. Approximately 6000 of these have been converted to radio-read technology. Our current conversion program plans 1000 radio read conversions to be accomplished each year. At this rate all city water meters will be converted to radio read by the year 2012. In addition to the conversion of existing water meters radio read technology is being installed in all new development

For Fiscal Year 2006-2007, it is staff's recommendation to continue standardizing the conversion of our water meter reading and reporting system to radio read technology by making the sole source purchase of both our annual supply of water meters and radio transmitters (MXU's) from Sensus Metering Systems. A financial and operational evaluation of the sole source purchase recommendation is provided in the attached Memo dated July 11, 2006.

The \$399,300 purchase order recommended for approval for water meters and MXU devices includes \$100,000 for the replacement of 700 old water meters found to be registering at only 85% efficiency through our water meter aging program. These 700 water meters were installed in 1987. The water meter aging program tests for and identifies inefficient water meters annually.

Section 3.04.120 of the Municipal Code allows the City to purchase brand names or equal specifications when the "Purchasing Officer determines that the use of brand name or equal specification is in the City's best interests". In addition, Section 3.04.150 of the Municipal Code provides that the City Council may approve a purchase where the "Purchasing Officer determines that there is only one source to the required supply or service". The Finance Director has made the above two determinations. Staff recommends continuing to standardize our water meter reading system by continuing to purchase Sensus meters and radio read component parts.

FISCAL/RESOURCE IMPACT: This purchase is budgeted in the FY 2006-07 Meter Division (650.5720.43897).

Agenda Item # 9

Prepared By:

Deputy Director Public Works/Operations

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 19, 2006

FINAL MAP APPROVAL VIENTO PHASE I (TRACT 9791)

RECOMMENDED ACTION(S):

1. Approve the final map, subdivision improvement agreement and improvement plans.
2. Authorize the City Manager to sign the subdivision improvement agreement on behalf of the City.
3. Authorize the recordation of the final map and the subdivision improvement agreement following recordation of the development improvement agreement.

EXECUTIVE SUMMARY:

Tract 9791 is a 19 lot subdivision located on the northwest corner of the East Central Avenue and Butterfield Boulevard intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on January 10, 2006.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL/RESOURCE IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 10

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 28, 2006**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:02 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Grzan, Sellers, Tate and Mayor Kennedy
Late: Council Member Carr (arrived at 6:05 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment(s) for items not appearing on this evening's agenda. No comments were offered.

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

CLOSED SESSION:

City Attorney Kern announced the below listed closed session item:

1.
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Authority Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:04 p.m.

Council Member Carr joined the City Council in closed session.

CONVENE

Mayor Kennedy convened the meeting at 7:04 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Kern announced that no reportable action was taken in closed session.

Mayor Kennedy announced the City Council would reconvene to closed session at the conclusion of the open session under the regular/special meeting agenda as it relates to the City Manager's performance evaluation.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

RECONVENE TO CLOSED SESSION

Mayor Kennedy reconvened to closed session at 9:27 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 10:23 p.m. He announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 10:24 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 29, 2006**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:10 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Sellers, Tate and Mayor Kennedy
Absent: Council Member Grzan

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment(s) for items not appearing on this evening's agenda. No comments were offered.

OTHER BUSINESS

1. CALL GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 7, 2006

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Grzan absent, 1) **Adopted** Resolution No. 6028, Calling for an Election to be Held on Tuesday, November 7, 2006 to Elect Mayor, and Two City Council Members; 2) **Adopted** Resolution No. 6029, Requesting the Services of the County of Santa Clara Registrar of Voters and the Consolidation of the Election; and 3) **Adopted** the November 7, 2006 Abbreviated Election Calendar.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Carr requested that staff return with a staff report that considers charging for candidate statements.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 7:14 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 13

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1781, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-1 7,000/RESIDENTIAL PLANNED DEVELOPMENT ON A 9.97 ACRE SITE LOCATED ON THE SOUTH SIDE OF EAST MAIN AVENUE APPROXIMATELY 400 FEET EAST OF THE CALLE MAZATAN/EAST MAIN INTERSECTION. (APN 726-16-028) (ZA-05-05: EAST MAIN-MARRAD)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1781, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 28, 2006, the City Council Introduced Ordinance No. 1781, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1781, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-1 7,000/RESIDENTIAL PLANNED DEVELOPMENT ON A 9.97 ACRE SITE LOCATED ON THE SOUTH SIDE OF EAST MAIN AVENUE APPROXIMATELY 400 FEET EAST OF THE CALLE MAZATAN/EAST MAIN INTERSECTION. (APN 726-16-028) (ZA-05-05: EAST MAIN-MARRAD)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

SECTION 4. The City Council finds that the proposed R-1 7,000 RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The City Council hereby amends the City Zoning Map as shown in attached Exhibit "A".

SECTION 6. The City Council hereby approves the precise development plan as contained in that certain series of documents dated June 2, 2006 (date of receipt by the Community Development Department) on file in the Community Development Department, entitled "San Savigno" prepared by MH Engineering and as amended as follows:

(1) All floor plans & elevation shall be reviewed by the Architectural and Site Review Board (ARB) prior to final map approval.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 28th Day of June 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

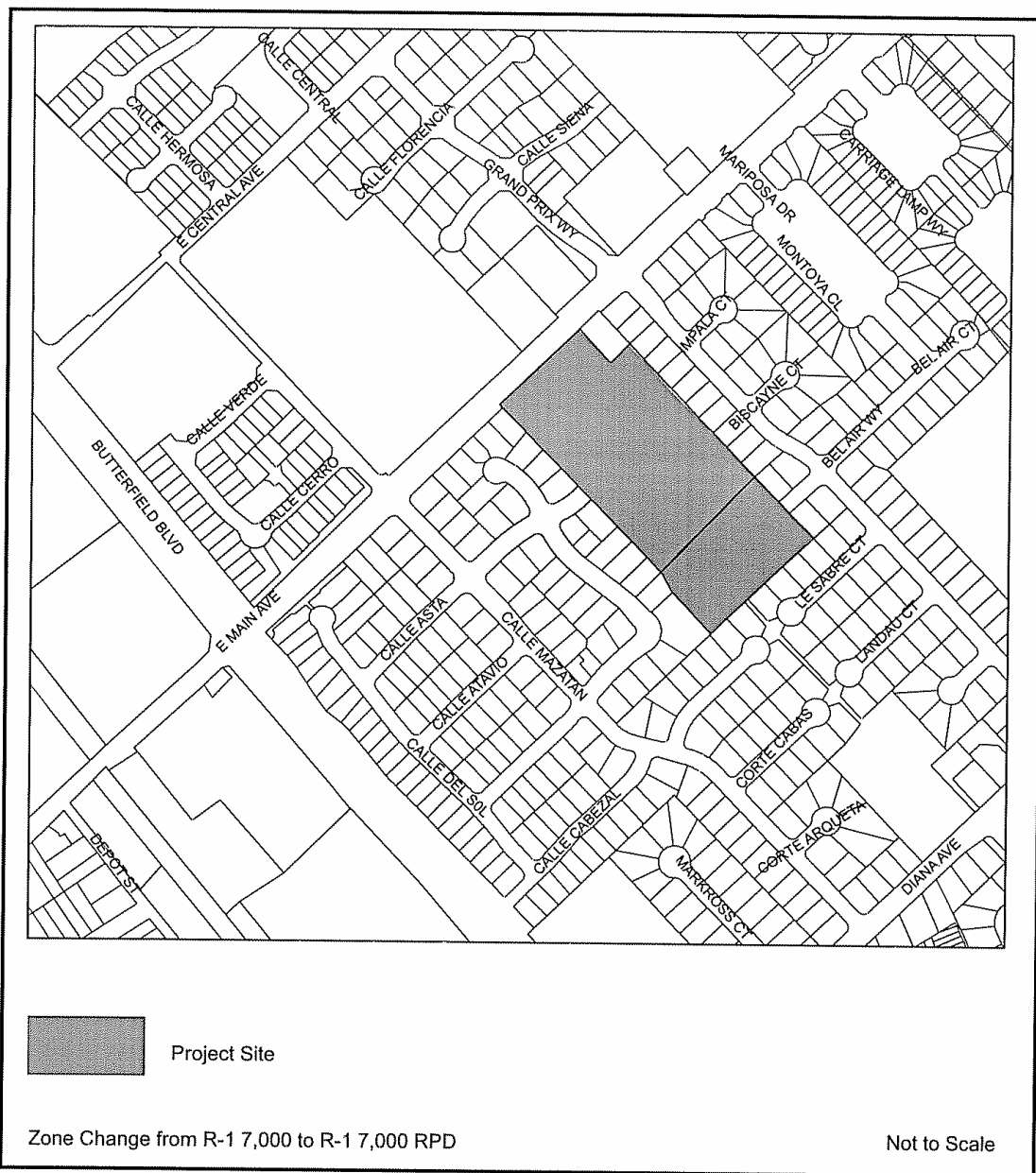
⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1781, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY OF MORGAN HILL
Prepared by Community Development Department

EXHIBIT A

ZA-05-05: Main - Marrad

R:\PLANNING\Maps\Illustrator maps\Vicinity Maps\ZA-05-05 Main-Marrad.pdf





CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 14

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1782, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-04 FOR APPLICATION MP 04-19: EAST MAIN-THRUST (APN 726-16-028) (DA-05-04: E. Main-Marrad)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1782, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 28, 2006, the City Council Introduced Ordinance No. 1782, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO: 1782, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL APPROVING DEVELOPMENT AGREEMENT
APPLICATION DA-05-04 FOR APPLICATION MP 04-19: EAST
MAIN-THRUST (APN 726-16-028) (DA-05-04: E. Main-Marrad)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 26 building allocations for fiscal years 2006-07, 2007-08 & 2008-09 to application MP 04-19: E Main-Thrust to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwellings</u>
MP 04-19: E Main-Thrust	FY 2006-07 (13 units)
	FY 2007-08 (5 units)
	FY 2008-09 (8 units)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 28th Day of June 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

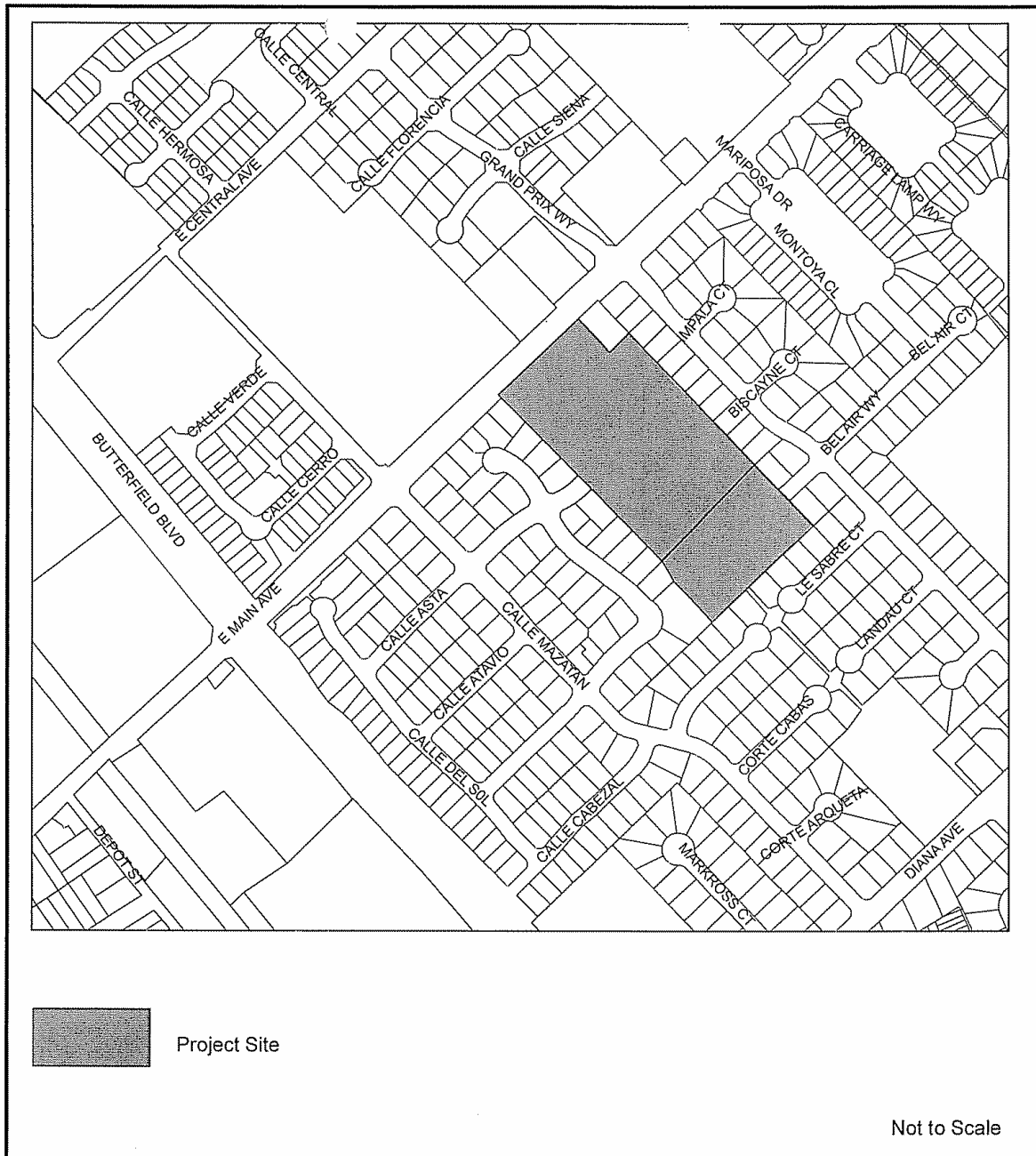
P

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1782, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY OF MORGAN HILL
Prepared by Community Development Department

VICINITY MAP

ZA-05-05: Main - Marrad

R:\PLANNING\Maps\Illustrator maps\Vicinity Maps\ZA-05-05 Main-Marrad.pdf





CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 15

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1783, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 835, NEW SERIES, SECTION II A. 2, ELIMINATING THE EXCLUSION OF GROCERY SUPERMARKETS FROM THE LIST OF PERMITTED USES ALLOWED WITHIN THE PORTION OF THE MORGAN HILL BUSINESS PARK ZONED COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD). (ZA-05-30: CITY OF MORGAN HILL-COCHRANE PLAZA)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1783, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 28, 2006, the City Council Introduced Ordinance No. 1783, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1783, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 835, NEW SERIES, SECTION II A. 2, ELIMINATING THE EXCLUSION OF GROCERY SUPERMARKETS FROM THE LIST OF PERMITTED USES ALLOWED WITHIN THE PORTION OF THE MORGAN HILL BUSINESS PARK ZONED COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD). (ZA-05-30: City of Morgan Hill-Cochrane Plaza)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN:

SECTION 1. The ordinance amendment is required in order to serve the public convenience, necessity and general welfare as directed in the text of Measure H approved by the voters of the City of Morgan Hill on June 6, 2006.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. Contingent upon the Registrar of Voters certification of the June 6, 2006 election, Ordinance No. 835 New Series, Section II A 2. shall be amended as follows:

The permitted uses and development criteria for the portion of the Morgan Hill Business Park designated by this ordinance as “PUD-Commercial” are as follows:

PUD-COMMERCIAL

Permitted Uses: Retail stores (~~but excluding grocery supermarkets~~), ***grocery supermarkets***, wholesale business, restaurants, offices and professional offices, financial services, personal services, services agencies, banks and lending institutions, coffee shops, cocktail lounges, private educational facilities, wine tasting, parking garages, day care facilities and nursery schools.

SECTION 4. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 28th Day of June 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1783, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 16

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1784, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP 02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A THREE MONTH EXTENSION OF TIME FOR COMMENCEMENT OF CONSTRUCTION FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APNS 817-11-067 & 817-11-072) (DAA-04-09: E. DUNNE-DELCO)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1784, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 28, 2006, the City Council Introduced Ordinance No. 1784, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1784, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP 02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A THREE MONTH EXTENSION OF TIME FOR COMMENCEMENT OF CONSTRUCTION FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APNS 817-11-067 & 817-11-072) (DAA-04-09: E. Dunne-Delco)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 8 building allotments for FY 2005-06, to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-06: E. Dunne-Dempsey (Delco)	36

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule for MP-02-06: E. Dunne-Dempsey (Delco); attached to this resolution as Exhibit B.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 28th Day of June 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1784, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

EXHIBIT "B"

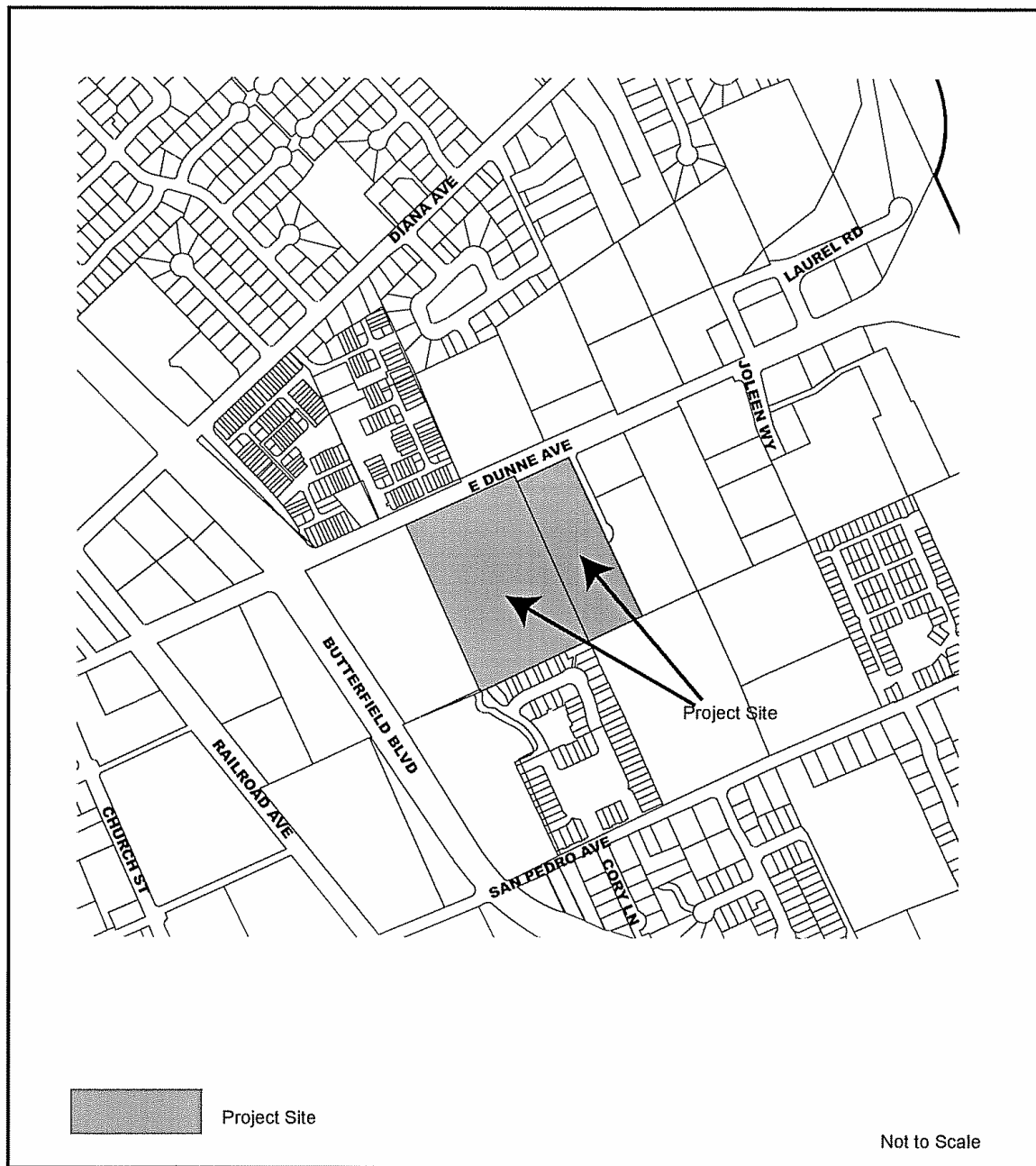
**REVISED DEVELOPMENT SCHEDULE
MP-02-06: E. DUNNE – DEMPSEY / MC-04-12: E. DUNNE - DELCO
FY 2005-2006 (8 units) 2006-07 (13 units), FY 2007-08 (5 units), FY 2008-09 (8 units)**

- I. SUBDIVISION AND ZONING APPLICATIONS**
Applications Filed: October 14, 2004
- II. SITE REVIEW APPLICATION**
Application Filed: October 14, 2004
- III. FINAL MAP SUBMITTAL**
Map, Improvements Agreement and Bonds:
FY 2005-06 (8 units) July 30, 2005
FY 2006-07 (13 units) July 30, 2006
FY 2007-08 (5 units) July 30, 2007
FY 2008-09 (8 units) July 30, 2008
- IV. BUILDING PERMIT SUBMITTAL**
Submit plans to Building Division for plan check:
FY 2005-06 (8 units) February 15, 2006
FY 2006-07 (13 units) August 15, 2006
FY 2007-08 (5 units) August 15, 2007
FY 2008-09 (8 units) August 15, 2008
- V. BUILDING PERMITS**
Obtain Building Permits
FY 2005-06 (8 units) May 15, 2006
FY 2006-07 (13 units) September 30, 2006
FY 2007-08 (5 units) September 30, 2007
FY 2008-09 (8 units) September 30, 2008
- Commence Construction:
FY 2005-06 (8 units) *September 30, 2006* ~~June 30, 2006~~
FY 2006-07 (13 units) April ~~June 30, 2007~~
FY 2007-08 (5 units) April ~~June 30, 2008~~
FY 2008-09 (8 units) April ~~June 30, 2009~~

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 17 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



CITY OF MORGAN HILL
Prepared by Community Development Department

VICINITY MAP

DA-04-09:

E. DUNNE-DELCO
APNS 817-11-067 & 072





CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item # 17

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1785, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1738 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-22 AND MC-04-13: BARRETT-ODISHOO ALLOWING FOR A FIVE MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A FOUR MONTH EXTENSION TO COMMENCEMENT OF CONSTRUCTION OF 5 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APN 817-33-003) (DAA-04-05: Barrett-Odishoo)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1785, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 28, 2006, the City Council Introduced Ordinance No. 1785, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

Agenda Item #

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1785, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1738 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-22 AND MC-04-13: BARRETT-ODISHOO ALLOWING FOR A FIVE MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A FOUR MONTH EXTENSION TO COMMENCEMENT OF CONSTRUCTION OF 5 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APN 817-33-003) (DAA-04-05: Barrett-Odishoo)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1785, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 28, 2006, the City Council Introduced Ordinance No. 1785, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1785, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1738 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-22 AND MC-04-13: BARRETT-ODISHOO ALLOWING FOR A FIVE MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A FOUR MONTH EXTENSION TO COMMENCEMENT OF CONSTRUCTION OF 5 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION. (APN 817-33-003) (DAA-04-05: Barrett-Odishoo)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 5 building allotments for FY 2005-06, to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-22: Barrett-Odishoo	36

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule for MP-02-22: Barrett-Odishoo; attached to this resolution as Exhibit B.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 28th Day of June 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1785, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

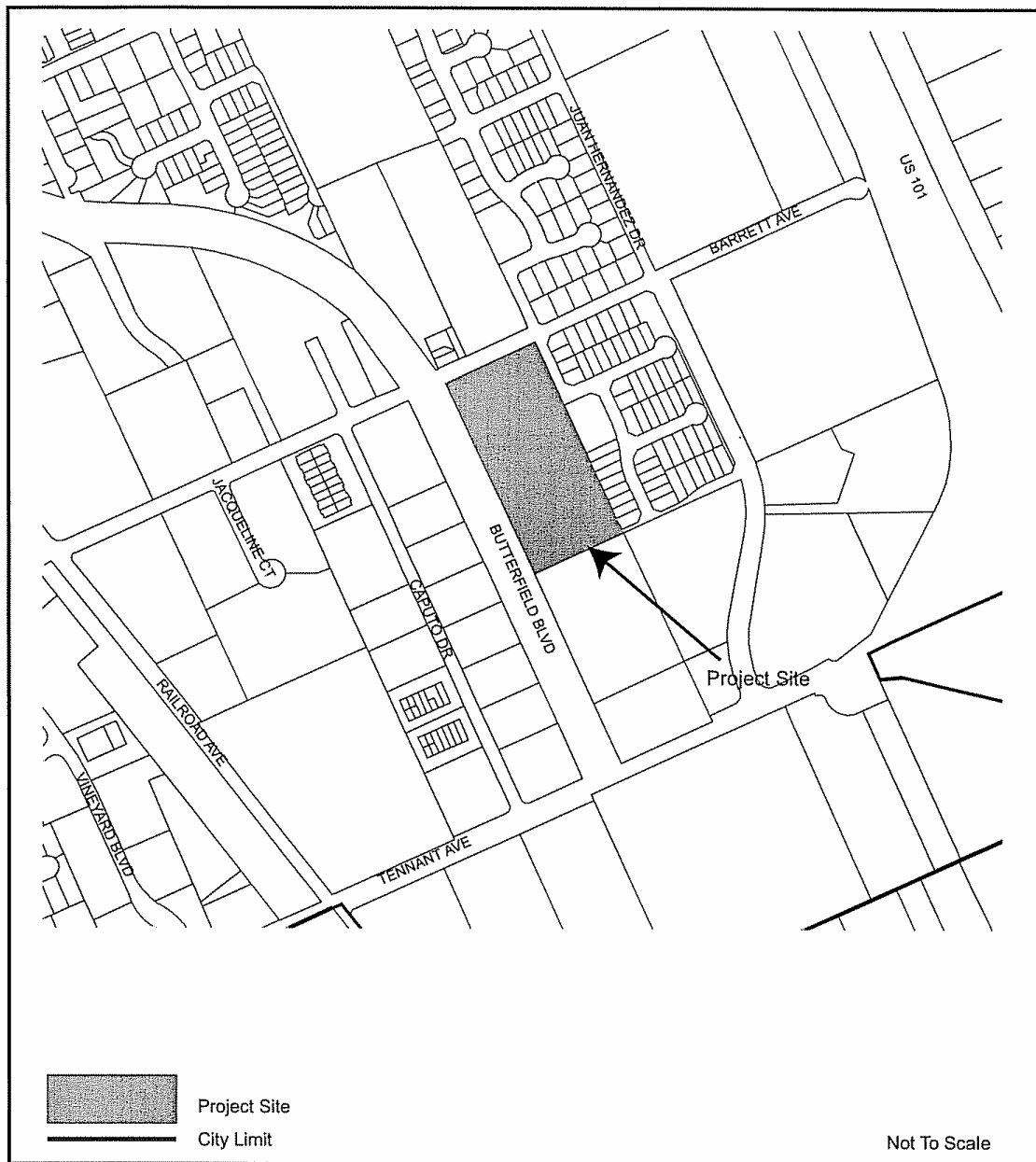
EXHIBIT "B"
DEVELOPMENT SCHEDULE
MP-02-22 and MC-04-13: Barrett-Odishoo
VILLAS OF SAN MARCOS L.L.C.
FY 2005-2006 (5 units) 2006-07 (13 units), FY 2007-08 (5 units), FY 2008-09 (13 units)

I. SUBDIVISION AND ZONING APPLICATIONS	
Applications Filed:	August 23, 2004
II. SITE REVIEW APPLICATION	
Application Filed:	August 23, 2004
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	
FY 2005-06 (5 units)	September 30, 2005
FY 2006-07 (13 units)	July 30, 2006
FY 2007-08 (5 units)	July 30, 2007
FY 2008-09 (13 units)	July 30, 2008
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 2005-06 (5 units)	November 30, 2005
FY 2006-07 (13 units)	August 15, 2006
FY 2007-08 (5 units)	August 15, 2007
FY 2008-09 (13 units)	August 15, 2008
V. BUILDING PERMITS	
Obtain Building Permits	
FY 2005-06 (5 units)	August 15, 2006 March 31, 2006
FY 2006-07 (13 units)	September 30, 2006
FY 2007-08 (5 units)	September 30, 2007
FY 2008-09 (13 units)	September 30, 2008
Commence Construction:	
FY 2005-06 (5 units)	October 15, 2006 June 30, 2006
FY 2006-07 (13 units)	April June 30, 2007
FY 2007-08 (5 units)	April June 30, 2008
FY 2008-09 (13 units)	April June 30, 2009

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 17 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



VICINITY MAP

DA-04-05: Barrett-Odishoo
APN 817-33-003



R:\PLANNING\Maps\Illustrator maps\Vicinity Maps\Zoning Amendment\ZA-04-16\DA-04-05: Barrett-Odishoo.pdf



**REDEVELOPMENT AGENCY
STAFF REPORT
MEETING DATE: July 19, 2006**

Agenda Item # 18

Approved By:

BAHS Director

Submitted By:

Executive Director

AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS, WATSON & GERSHON)

RECOMMENDED ACTIONS: Authorize Executive Director to execute Consultant Agreement for legal services in FY2006-2007 with Richards, Watson & Gershon in the amount of \$80,000.

EXECUTIVE SUMMARY: Due to the specialized nature of Redevelopment Law and the volume and magnitude of the transactions, the Redevelopment Agency traditionally uses outside counsel for assistance with its legal needs, including negotiation and drafting redevelopment documents.

Redevelopment Agency staff has used the services of Richards, Watson & Gershon since August 1996. The attached Consultant Agreement is in the amount of \$80,000. This represents a \$5,000 increase from the last fiscal year, which is due to the anticipated level of work needed for projects in the upcoming fiscal year. Primarily, this consists of legal services related to housing projects, the Redevelopment Plan Amendment, PBID formation and other economic revitalization projects.

FISCAL IMPACT: The contract amount of \$80,000 has been budgeted in the FY2006/07 BAHS budget; \$45,000 from account 317 (non-housing), and \$35,000 from account 327 (housing).

Attachment

**CITY OF MORGAN HILL
JOINT REGULAR & SPECIAL CITY COUNCIL
AND REGULAR & SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JUNE 28, 2006**

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 6:01 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Grzan, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Carr (arrived at 6:05 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Kern announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: Rossi v. City of Morgan Hill
Case Number: Santa Clara County Superior Court, Case No. 1-05-CV-046010
Attendees: City Manager; City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:05 p.m.

Council/Agency Member Carr joined the City Council/Agency Board in closed session.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Kern announced that no reportable action was taken in closed session.

Mayor/Chairman Kennedy announced that the Council would reconvene to closed session at the conclusion of the open session under the special meeting agenda as it relates to the City Manager's performance evaluation.

City Council Action

1. INTERVIEW TO FILL A VACANCY ON THE LIBRARY, CULTURE & ARTS COMMISSION

The City Council interviewed Emily Reich Shem-Tov to fill one of two vacancies on the Library, Culture & Arts Commission.

Mayor Kennedy indicated that he would be willing to proceed with a recommendation to appoint Ms. Shem-Tov to serve a two-year term on the Library Cultural & Arts Commission this evening.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Confirmed** the Mayor's **Appointment** of Emily Reich Shem-Tov to serve a 2-year term on the Library, Culture & Arts Commission; expiring April 1, 2008.*

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORT

Council Member Tate stated that the City's Youth Advisory Committee (YAC) sponsored a two-day leadership class for youth and that it was a success. He acknowledged Katherine Soult, who recently graduated from Live Oak High School with honors and will be attending Santa Clara University; and Samantha Bondi, a senior at Sobrato High School. He indicated that these two YAC members recruited excellent speakers and organized activities for this two-day session. He said that the twelve students attending the two day session enjoyed and profited from the sessions. He stated that he and Council Members Sellers attended a two-day ethics camp at Santa Clara University. Both he and Council Member Sellers came home with materials and great information. He stated that the camp was on value-based ethics and how to include ethics into an individual's personal ethical framework. Time was not spent debating the values, but on discussing individual values. The trainers spent a lot of time trying to

develop a logical approach to ethical questions, and putting it into a framework where individuals can make ethical decisions. He felt that this was a stimulating fun session where interchanges occurred with others in attendance. The second day was spent on the rules side of ethics as they apply to California Law.

Council Member Sellers addressed the ethics camp, stating that there were items he wanted to share with colleagues in attendance. He implored his colleagues to try and figure out a way to gain a broader participation from other City elected officials. He noted that Morgan Hill was the only city who had two elected officials in attendance both days of the ethics camp. He recommended that attendance should be expanded to other cities. He felt that the City was in a position to take ethics up a notch; becoming exemplary for the rest of the region. This is possible based on what the City has already done with the adopted value-based ethics that remains a viable active document. He did not believe an individual is done with ethics once an ethics acknowledgement form is signed, as ethics is an every day process. He also felt that ethics is a skill such that the more you utilize these skills, the more ethical an individual becomes. He recommended the Council expand the opportunity throughout the organization. He said that on the second day, those in attendance heard that one of their colleagues from the City of San Jose had been indicted and facing significant disciplinary actions as well as legal actions. He said that individuals understand that there are significant legal consequences in taking on the responsibility of being an elected official. He felt that everyone can aspire to a higher degree of ethical conduct and transparency in government that inspires additional confidence by the people individuals are elected to serve.

CITY COUNCIL COMMITTEE REPORT

CITY MANAGER REPORT

City Manager Tewes noted that last week, the Council adopted the City's annual budget for FY 2006-07. The budget document included a number of assumptions about how the state budget would impact the City. He indicated that staff made assumptions about whether or not the State would continue the program of paying for booking fees on behalf of counties, and whether or not the State would appropriate money under Proposition 42 for street maintenance activities. He said that it was not known that the State would adopt their budget before the end of the fiscal year, noting that State officials adopted their budget today. He stated that staff's assumptions proved to be correct. He said staff's assumptions were included in the City's final budget document.

City Manager Tewes addressed this evening's agenda. He informed the Council that item 17 will be pulled from the Consent Calendar in order to take a separate Council vote. He noted that on the Dais, the Council has a supplemental report for item 17 which would approve a preliminary engineering report. The supplemental material adds an asterisk that states the data contained in the report is subject to revision in the final engineering report as staff is conducting an audit on water bills for the various assessment districts. Item 19, it is a hearing on a zoning matter and the Council has a letter on the Dais from an individual regarding this matter and that he would like to make sure the letter is made a part of the record.

CITY ATTORNEY REPORT

City Attorney Kern informed the Council that she does not have a report to present this evening.

OTHER REPORTS

Council Member Sellers indicated that the Regional Planning and Transportation Committee discussed the fact that the City was invited to participate in the new Valley Transportation Authority (VTA) Caltrain subcommittee.

Mayor Kennedy said the VTA has a Policy Advisory Committee (PAC) which has a council member or mayor from each city in Santa Clara County serving as a member. Recently, PAC appointed a policy advisory board to be made up of members from each city. The policy advisory board will focus on Caltrain issues. He said that in the new VTA 30-year long range capital expenditure plan, there are approximately \$1 billion in funds earmarked for Caltrain. One of the highest ranking projects is double tracking of Caltrain to Gilroy; allowing reverse commute and expanded Caltrain services. He felt it important that Morgan Hill be represented on the policy advisory board. Therefore, he recommends that Council Member Sellers be appointed as the City's representative to the policy advisory board. He recommended that any issues relating to Caltrain be forwarded to Council Member Sellers attention.

Council Member Sellers said that in looking at the elections coming up this fall, he would like to ensure that there is continuity on the board as Morgan Hill needs to continue to be represented.

Mayor Kennedy stated that he is serving as a VTA Board Member and that when his term as Mayor ends, the Council will need to appoint someone to serve on the VTA board of directors and someone to serve on the policy advisory committee. He recommended the Council give thought to who should serve on the VTA board.

City Manager Tewes said that item 18 on the Consent Calendar contains a recommendation to award a landscape contract. He indicated the City received a protest from the apparent second low bidder. In light of this protest, staff is removing the item from the agenda; returning at a later date once the protest has been resolved.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Mayor Kennedy announced the following Fourth of July activities: July 3, 3:00 p.m., the City will be signing its agreement with its fourth sister city, the City of Mizuho, Japan. He stated that a reception will be held in the El Toro Room at 3:00 p.m., and is opened to the public. At 6:00 p.m., A Patriotic Sing will take place at Britton Middle School followed by a street dance in the downtown. There will be food music and entertainment taking place in the downtown. On July 4th, a run will take place at 8:00 a.m.; followed by the parade at 10:00 a.m. Following the parade, a festival will take place in the downtown. A firework display will take place in the evening. He stated that he just received invitation

cards from the City's sister city of San Martin de Hidalgo. Professor Eduardo Ramirez Lopez will be presenting an exhibition of his art work beginning July 8 at 6:00 p.m. at the Community & Cultural Center.

No further comments were offered.

City Council and Redevelopment Agency Action

ADOPTION OF AGENDA

City Council Action

CONSENT CALENDAR:

Mayor Kenned requested that items 6, 8 and 11 be removed from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-5, 7, 9, and 10 as follows:*

2. **MAY 2006 FINANCE & INVESTMENT REPORT - CITY**

Action: **Accepted** and **Filed** Report.

3. **AGREEMENT WITH "PACIFIC GROUP" TO PREPARE INDUSTRIAL LANDS AND SOUTHEAST QUADRANT MARKET STUDY**

Action: **Approved** and **Authorized** Execution of the Agreement; Subject to Review and Approval by the City Attorney.

4. **AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS TESTING AND INSPECTION SERVICES ON AN AS-NEEDED BASIS**

Action: 1) **Approved** a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Testing and Inspection Services on an As-Needed Basis at a Not-to-Exceed Cost of \$75,000 for Fiscal Year 2006-2007; and 2) **Authorized** the City Manager to Execute a Contract, Subject to Review and Approval by the City Attorney.

5. **AWARD OF CONTRACT TO PROVIDE PLAN CHECKING SERVICES AND STORM WATER MANAGEMENT ASSISTANCE ON AN AS-NEEDED BASIS**

Action: 1) **Approved** Fiscal Year 2006-2007 Professional Services Contract with Harris & Associates to Provide Contract Plan Checking Services and Storm Water Management Assistance on an As-Needed Basis at a Not-to-Exceed Fee of \$153,770; Subject to Adoption of the Fiscal Year 2006-2007 Budget; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.

7. **APPROVAL OF LABORATORY SERVICES FOR POTABLE WATER SAMPLING AND ANALYSIS**
***Action:** 1) Approved Agreement for Laboratory Services for Potable Water Sampling and Analysis in the Amount of \$233,144 to Test America Analytical Testing Corporation; and 2) Authorized the City Manager to Execute the Agreement on Behalf of the City; Subject to Review and Approval by the City Attorney.*
9. **AWARD OF CONTRACT FOR 2006-2007 PAVEMENT RESURFACING PROJECT**
***Action:** 1) Awarded Contract to O'Grady Paving, Inc. in the Amount of \$941,178 for Construction of the 2006-2007 Street Resurfacing and Reconstruction Project; Subject to Review and approval by the City Attorney; and 2) Authorized a \$95,000 (10%) Construction Contingency.*
10. **MEMORANDUM OF UNDERSTANDING (MOU) WITH THE CITY OF MORGAN HILL POLICE OFFICERS ASSOCIATION (POA)**
***Action:** Approved One-Year Memorandum of Understanding with the City of Morgan Hill Police Officers Association.*
6. **DOWNTOWN TRAFFIC CALMING – ONE YEAR REVIEW AFTER JUNE 2005 INITIAL INSTALLATION**

Gary Walton, representing the Downtown Association, stated that it was his understanding that the speed bumps would remain in the downtown, for the mean time, in order to slow traffic down. He said that the Downtown Association would like to see the street narrowed to slow the traffic down and that additional parking be provided. He reported on a second generation traffic calming system from Australia. He stated that Australia's traffic calming system could be applied in the downtown by putting people on the street and creating outdoor areas from the downtown streets. He felt that these items would slow traffic down. An example used in the traffic calming system is the creation of a pace car sticker. Those with pace car stickers would travel the speed limit. If every city vehicle, merchants, and downtown property owners agreed to be pace cars, it would slow traffic down in the downtown. He felt the City needs to look beyond the physical elements such as speed bumps, flashing lights, and speed signs as there are other items to be considered. He informed the Council that the Downtown Association is supportive of retaining the speed bumps in the downtown as it is their belief they slow traffic down.

Mayor Kennedy said that when he visited Ireland in March 2006, he noticed that many of the major highways approaching cities, the Irish traffic department created narrow sections in the streets. He did not believe the City narrowed the road enough. He felt that narrowing the roads would be an effective, economical way of slowing traffic down.

***Action:** No action taken; Information Only.*

8. **PUBLIC WORKS LANDSCAPE MAINTENANCE AGREEMENT FOR FISCAL YEAR 2006-2008**
***Action:** This item was removed from the agenda.*

11. PARK AND SPECIAL EVENT USER FEES

City Manager Tewes said that the recommendation for item 11 is to set July 26, 2006 as the hearing date for proposed park rental charges and special event user fees. He indicated that earlier today, Mayor Kennedy requested additional information. He said that it is staff's intent to provide additional information at the July 26, 2006 hearing.

Mayor Kennedy referred to item 11, page 105 of the agenda packet. He stated that the table with proposed rates is not clear. It is not clear what the City's annual operating costs are for all playing fields or how much of these costs are being offset by user fees. He inquired whether staff could provide a total cost of what is being paid to operate City fields and how much is being received in income for the use of the fields. He clarified that this is the information he requested from staff.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) set the **Public Hearing Date** for July 26, 2006 for the Proposed Park Rental Charges and Special Event User Fees.*

Redevelopment Agency Action

CONSENT CALENDAR:

Chairman Kennedy requested that item 13 be removed from the Consent Calendar; and Vice-chair Grzan requested that item 14 be removed from the Consent Calendar as well.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Redevelopment Agency Board unanimously (5-0) **Approved** Consent Calendar Item 12 as follows:*

12. MAY 2006 FINANCE & INVESTMENT REPORT - RDA

Action: **Accepted** and **Filed** Report.

13. CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT MARKETING PLAN FOR FISCAL YEAR 2006-2007

Chairman Kennedy opened the floor to public comment.

Dan Ehrler acknowledged members of the economic development partnership between the Chamber and the City; in particular City staff members Joyce Maskell, Bill Newkirk, and Garrett Toy for their efforts in making the partnership work. He felt that what has been forged over the past year has been extraordinary and is making a difference. It was his belief that this partnership will lead to real opportunities, benefits and terrific results. He stated that Tim Hendricks and Bob Martin worked on marketing.

Chairman Kennedy said that when the Chamber held its last meeting, the subject of tourism and a regional approach to tourism was discussed extensively. There was a proposal to work together with

Gilroy's Visitor Bureau to come up with a partnership. Unfortunately, the proposed partnership was not truly an equal partnership. It was proposed that the City of Morgan Hill contribute \$36,000 while Gilroy's Visitor Bureau contributes \$24,000, less \$12,000 in administrative costs. The Board did not suggest proceeding with this agreement, but intends to go back to Gilroy to see if something can be worked out. He inquired whether Mr. Ehrler had any news to report.

Mr. Ehrler said that the Chamber remains committed to doing what it can to establish a regional tourism program. It would be called the South Santa Clara Valley Tourism Partnership between Gilroy's Visitor Bureau and the economic development partnership with the City of Morgan Hill. He indicated that the Chamber's Chairman, Ted Fox, will be meeting tomorrow with the chairman of the Gilroy's Visitor Bureau to address the differences raised by Mayor Kennedy about an equal economic contribution by both entities. The differences raised at the Chamber's board meeting will be addressed tomorrow morning. He indicated that the Chamber is looking toward a resolution of this matter. If the details originally proposed are not a part of the contract, the Chamber will investigate whether it can partner, regionally, instead of having a South Santa Clara Valley Tourism partnership. He said the Chamber would like to take some of the \$36,000 from Morgan Hill's program and match these funds for advertising and other items separately. He stated that the Chamber will pursue a regional opportunity as well. He said that the Chamber would return to inform the Council about negotiations and the details that have been included in the contract before the Council this evening.

Agency Member Tate said that the Chamber will be going into a new area with a tourism program if it can be put together. He requested the Chamber focus on measurements as part of the Chamber's quarterly reports so that the Council can determine whether this is an area worth investing.

Mr. Ehrler said that the Chamber would be able to track hits on what would be separate websites and telephone numbers through advertising and tradeshow. He said the Chamber will be talking to hotel owners to request their assistance in finding out where their clients/customers are coming from. He indicated that the Chamber will be putting together a tracking system that will be important for everyone. He stated that the Chamber is also interested in determining how tourists find out about Morgan Hill. He informed the Council that the Chamber will return to the Council as soon as possible with whatever decision is made. If a change is needed, the Chamber will return to the Council with a recommendation.

In response to Vice-chair Grzan's question, Mr. Ehrler informed the Council that the mission/goal of the Economic Development Marketing Plan is to bring businesses into Morgan Hill in spaces and areas available, and to help facilitate a process to assist businesses relocating to Morgan Hill in order to create jobs and generate revenues.

Vice-chair Grzan recommended the Chamber describe the goal in terms of enhancing economic conditions/returns. He would like to know how the Chamber would measure its success in this area. He would also like to know how many new businesses were brought into the City under this plan.

Mr. Ehrler said that in the past year, one new business came to the City of Morgan Hill. He noted that 2-3 years ago, under the economic development program, the Chamber's campaign to bring Trader Joe's to Morgan Hill may have helped. He said that in the last couple of months, the Chamber has spoken to

individuals who would like to start businesses in Morgan Hill. These individuals are looking for property. He said the Chamber has knowledge of available properties in the city. He said the Chamber included a special enclosure/insert entitled *Silicon Valley Now* in the San Jose Mercury Newspaper, and felt that it was an exceptional article that showcased Morgan Hill. He indicated that this insert was distributed to 65,000 homes in the peninsula area. He said that he would try to return to the Council with measurable goals for this plan.

Vice-chair Grzan said that he would be looking to see how the City would measure the economic return from this insert.

Executive Director Tewes said that the implementation of the City's economic development strategy is based on the Council's adopted economic development strategy. He noted that it has been one of the Council's goals to hold a workshop to review its existing strategy to determine whether or not its goals and objectives are appropriate. Given the City's budget situation, he said the City has been focusing on a fairly narrow aspect of economic development and encouraged the Council to think more broadly. Based on necessity, staff has been focusing on sales tax deals and helping commercial brokers fill up space. He stated that a truly broad economic development strategy would look toward attracting jobs and increasing revenues. Staff has been spending more time finding places where people can spend their money, rather than seeking opportunities to make money. He felt that economic development should be expanding the community's wealth and diversifying its economic base. Staff is hopeful that when the Council holds its economic strategy review, the Council will look broadly and develop appropriate mission/goal statements.

No further comments were offered.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0): 1) **Accepted** the Fourth Quarter Report; and 2) **Authorized** the Executive Director to Prepare and Execute an Agreement, in an Amount Not to Exceed \$125,000, with the Morgan Hill Chamber of Commerce to Implement their Economic Development Partnership Scope of Services for Fiscal Year 2006-2007; Subject to Review and Approval by Agency Counsel.*

14. AMENDMENT OF ARCHITECTURAL CONSULTANT AGREEMENT FOR CENTENNIAL RECREATION CENTER (CRC)

Senior Project Manager Dumas presented the staff report; indicating that on April 19, 2006, the Council approved additional funds for building additions to the CRC. The additional fees included design fees for the architects to revise the drawings. On May 24, 2006, the Council approved staff's recommendation to pay additional construction administration fees to Noll & Tam. He said the Council's action of April 19 and May 24 approved the costs, however it was not clear that staff was requesting authority to amend Noll & Tam's contract. As a clarification, and to be conservative, staff is returning this evening for Council authority to amend the architect's contract. He said that staff is also requesting authority to extend the term of Noll & Tam's contract and additional design fees to add site directional signage, electrical revisions and to study alternate gym floor graphics.

Vice-chair Grzan noted the staff report includes \$12,350 for YMCA office revisions at their request. He inquired whether these costs were being passed on to the YMCA.

Executive Director Tewes responded that the office revision charges are not being passed on to the YMCA. He stated that the design and construction costs are borne by the project budget. He clarified that the revisions are being proposed to the building to be developed and owned by the Redevelopment Agency. The City will be operating, in partnership, with the YMCA on a three-year agreement. He said that the YMCA requested changes at the Council's April 19, 2006 meeting and was his recollection that there was Council discussion at that time about whether or not the YMCA should participate financially. Staff reported then and now that it was staff belief that the office revisions are appropriate costs for the project.

Vice-chair Grzan said that it has been his experience that when a city opens a facility and it is modified at the request of the occupants, these costs are generally borne by the tenant. He inquired whether this would be a prudent approach in this case.

Executive Director Tewes noted that the YMCA has a short term operating agreement with the City. He clarified that the changes would be permanent improvements to the building. It is viewed that the improvements are needed in order to enhance the "membership" model. He stated that the Council adopted an approach on how to operate the facility that encourages memberships. He indicated that the YMCA would be the City's partner in providing the services and in marketing memberships. The YMCA suggests that the membership model requires modifications to the offices where staff will be located in order to interact with members. As the City adopted the membership model, the improvements would be for the benefit of the owners of the facility, and the public. He clarified that the changes were recommended by the YMCA in the approach they preferred, and that it was not something the City would have recommended had the city been the operator, absent the involvement of the YMCA.

Mr. Dumas informed the Council that the \$90,000 includes design fees (\$78,000 in construction costs and \$12,000 in design fees.)

Chairman Kennedy referred to the construction/administration fee of \$72,000. He noted the City has a strong construction manager on site. He inquired why the architectural firm believes it needs this amount for construction administration.

Mr. Dumas said that the architect's justification for the increased fee is for work they have to respond to. They would prepare supporting data for any claims or change orders for the project. They would also evaluate substitutions proposed by contractors. He said the City's construction manager relies on the architect's responses as they have control over the design and aesthetic of any proposed substitution. He stated the City's agreement allows for review of substitution as additional services, not a part of the original agreement.

Agency Member Carr noted that a vast majority of the costs are items the Council previously authorized in April 2006.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board, on a 4-1 vote with Vice-chair Grzan voting no: 1) **Authorized** the Executive Director to Amend Noll & Tam's Consultant Agreement to Allow for a Term Extension Until December 1, 2006; and 2) **Authorized** the Executive Director to Amend Noll & Tam's Consultant Agreement in the Amount of \$94,714 for Additional Services.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Mayor/Chair Kennedy requested that item 15 be removed from the Consent Calendar.

15. JOINT SPECIAL & REGULAR CITY COUNCIL AND SPECIAL & REGULAR REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 21, 2006

Mayor/Chairman Kennedy offered a correction to page 140 of the agenda packet, second to the last paragraph under City Council reports. He requested the second sentence be amended to read: "He attended a meeting last Thursday where they voted on a list of priorities for a 30-year long range plan."

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** the June 21, 2006 Minutes, as Amended.*

City Council Action (Continued)

CONSENT CALENDAR:

Council Member Sellers indicated that he and Council Member Carr will need to recuse themselves from participating on Item 16 as they both reside, separately, within 500 feet from where construction is to take place.

Mayor Kennedy noted that staff requested that item 17 be removed from the consent calendar.

16. AWARD OF CONTRACT FOR 2006-2007 PAVEMENT CRACK SEALING PROJECT

Council Members Carr and Sellers recused themselves from participating on agenda item 16 and excused themselves from the Council Chambers.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Grzan, the City Council, on a 3-0 vote with Council Members Carr and Sellers absent: 1) **Awarded** Contract to Graham Contractors, Inc. in the Amount of \$35,100 for the 2006-2007 Crack Sealing Project; and 2) **Authorized** a \$3,500 (10%) Construction Contingency.*

Council Members Carr and Sellers resumed their seats on the Dais.

17. FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT SETTING OF ANNUAL PUBLIC HEARING – Resolution Nos. 6025, 6026, and 6027

Mayor Kennedy indicated that he resides within 500 feet of the Conte Garden Park project. Therefore, he would recuse himself and step down from discussion of item 17. He stepped away from the Dais.

City Manager Tewes indicated that this is a recommendation that the Council adopt the preliminary engineer's report and call for the public hearing for July 26, 2006. At that time, the Council will consider levying the assessments on a variety of landscape assessment districts.

Mayor Pro Tempore Grzan opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent: 1) **Adopted** Resolution No. 6025, Initiating Proceedings for the Levy of Assessments for Fiscal Year 2006-2007; 2) **Adopted** Resolution No. 6026, Providing Preliminary Approval of the Engineer's Report and the Proposed Assessment Levy; and 3) **Adopted** Resolution No. 6027, Declaring the City's Intention to Levy the Assessments in the District, and to set the Public Hearing Date for July 26, 2006.*

Mayor Kennedy resumed his seat on the Dais.

City Council Action

PUBLIC HEARINGS:

18. ZONING AMENDMENT, ZA-05-09/DEVELOPMENT AGREEMENT, DA-05-08: CHURCH-ALCINI

Senior Planner Linder presented the staff report on a request for approval of a precise development plan for a proposed project to be located between Monterey Road and Church Avenue. She informed the Council that at the Planning Commission hearing, the applicant requested additional time to work out some numbers with the City's public works department with respect to the development agreement. She indicated that these applications were advertised for public hearing this evening. Therefore, staff recommends the Council continue the applications to July 19, 2006, following receipt of public testimony.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Continued** this item to July 19, 2006.*

19. ZONING AMENDMENT, ZA-05-05/ DEVELOPMENT AGREEMENT, DA-0-5-04: EAST MAIN-MARRAD – *Ordinance Nos. 1781 and 1782, New Series*

Senior Planner Linder presented the staff report on a request for approval of a precise development plan for a 35-unit residential project. Also, the approval of a development agreement associated with the project located on the south side of East Main, past Calle Mazatan, across from the El Toro Elementary School.

Mayor Kennedy noted that this project looks similar to a project adjacent to his home, although located at a different location. He referred to the open space located at the corner that has a trail connecting to Diana Park. He inquired whether this was privately owned open space.

Ms. Linder clarified that a publicly accessed park is being proposed and would not have a fence separating the two parks. It is proposed that the ½ acre new corner park would be a part of the Belle Estate lighting and landscape assessment district.

Mayor Kennedy said that there has been a problem with the park adjacent to his development as the property owners did not provide for improvements. Therefore, the connecting trail may become a safety hazard as the surface is breaking up and may become a trip hazard. He said that there is a lack of maintenance because there is not enough money to maintain the park. He expressed concern that the City would be heading down the same path with the proposed park.

Ms. Linder noted that the development agreement before the Council this evening does not cover this particular phase or the subdivision map reviewed by the Planning Commission. She said that staff could look into Mayor Kennedy's concern; reviewing options as part of phase IV of this project, once it receives allocations and the City enters into the development agreement stage.

Mayor Kennedy supported Ms. Linder's recommendation that staff look at park maintenance alternatives for the proposed park as this kind of situation is not working in the residential development adjacent to his home. He would hate to see the City repeat the same mistake.

City Manager Tewes did not believe the City should be recommending new lighting and landscaping districts be established as part of new residential development.

Ms. Linder clarified that it is proposed to annex the proposed park with the existing park, and not to create a new lighting and landscape district. She stated that the park is not being created at this time, nor is it covered by the development agreement before the Council.

Mayor Pro Tempore Grzan shared Mayor Kennedy's concern in that the City has identified an area to be a park. At the discretion of the homeowners, they may decide not to maintain the park and that it will become an eye sore. He felt there has to be a legal way to require homeowners to maintain the park or for the City to maintain the park; billing the Agency or an entity for the cost to maintain the park.

Mayor Kennedy opened the public hearing.

Katherine Krenzel, Le Sabre Court, informed the Council that she and her family have been 17-year Morgan Hill residents. She resides in a neighborhood of 1,200-1,300 square foot single story homes. When they moved to Morgan Hill, they had an open field at the back of their fence. They always knew the vacant land would eventually develop, but felt confident the Council would consider the approval of development that would be consistent with the existing neighborhood. She informed the Council that her husband prepared a packet and sent it to the Council with a comparison of two homes before their home was developed, and a home designed directly behind their home. She said that the homes proposed behind their home have small setbacks and are designed to be two-story homes that look directly into their backyard. She stated that she does not have a problem with the development, but does have a problem with the development being a violent, massive two-story structure that they would be looking at out of their window(s). She understands the competition to develop is fierce and the need to build “big” is driven by developers. However, she did not believe that the merit of the design is an excuse for developing this type of development in a neighborhood that has been developed for some time. It is her hope the proposal would be sent back in order to consider the immediate environment and the placement of the homes. She expressed concern that the new homes would be very large and would look down onto her property. Also of concern are the small setbacks and siting the homes close to fences. She clarified that all the homes along Le Sabre Court and Grand Prix are single story homes. The Belle Estates homes were developed as two-story homes at the other end of the development. She did not believe the proposed development is taking into consideration the invasive affect they have on the existing single story homes.

Lisa Day Krenzel, a 17-year Morgan Hill resident, indicated that the homes along Grand Prix are single story homes and that the homes located on Montoya Circle are two-story homes. She felt it would be invasive to have gigantic buildings next to single story homes. She informed the Council that her father argued that additional setbacks are required. In looking at the map being presented, it appears the City and the developer have done a good job, but felt that the setbacks are not adequate. Even if the two-story homes were moved back, they would still take away from the horizon because of their height. Privacy is also an issue. She informed the Council that some of the community members have discussed solutions to the problem. She said that it was her understanding that there is a one-story option proposed with this development. She felt it would make sense to site one-story homes adjacent to existing one-story homes and two-story homes adjacent to existing two-story homes; otherwise, it would be a mismatch. She said that constructing two-story buildings on the other side of single story homes would create a narrow rift of one-story homes. She informed the Council that she is a runner and that it is difficult to access the east and west side of the neighborhood as all streets run north and south. She recommended that development better incorporate the community. She indicated that Diana Park is a public park and that it can be accessed by everyone in her neighborhood. She expressed concern with the proposed rectangular open space park that may be fenced and made into a private park. It has been her hope that the existing path would eventually lead to another park or recreational area. She stated her support of another public park, attaching the existing path to a public park.

Dick Oliver informed the Council that he acquired the project and would be developing the project. With regard to the park land located at the lower right hand corner of the site plan, he said that he would commit to doing whatever the City would like him to do. If the small park on the corner is owned and maintained by a homeowners association, the homeowners would maintain the park. However, the homeowners may come to the City at some point in time to address a problem with insurance for a

private park and concerns that the public is using the park. If included into a lighting and landscaping district, the City would control the landscaping and access to the park. He clarified that it was the intent/commitment to make the park accessible via the existing pathway. He is committed to installing landscape improvements along the pathway to make it look nice as well as accessible. He referred to lots 26, 27, 28 and 29, the lots that back up to the homes on Le Sabre Court. He indicated that lot 26 and 28 are single story homes in order to minimize the impacts to the existing homes. The houses to be built on Belle Estate are proposed as two story homes. He agreed that there is a problem in any community when you have new development adjacent to existing homes. Over time, as the price of new homes escalates; you tend to build two-story homes. He stated that homebuyers are seeking two-story homes to purchase. He felt that a few of the homeowners of the single family homes along Grand Prix will come to the City requesting improvements to their homes and/or to add a second story. He stated that he has tried to be sensitive to the needs of the neighborhood. He said that this has been the site of unsightly greenhouses for a long time; being vacant for the past two years.

Mayor Kennedy inquired whether it would be feasible for lots 27 and 29 to be designed as single story homes.

Mr. Oliver clarified that lots 26 and 28 are designed as single story homes. He said that it is possible to design one additional single story home, but that he would have to reduce the open space park area because the single story home has a much wider lot in order to fit the home on the lot. He said that he cannot move any of the lots on the lower side because of existing utility lines. He could reduce the size of the park and change lot 2 to a one-story home. However, this would change the mix of homes; resulting in having three one-story homes in a row. If the Council felt this was important to do, he would agree to do so. However, he could not do so along Grand Prix as the dimensions do not allow him to do so. He stated that lots 10-16 along Grand Prix are two-story homes. He stated that lot 25 is a two story home and lot 23 is a single story home. He said that he could switch lots 25 and 23.

City Manager Tewes noted that all of the speakers, including Mr. Oliver, have addressed the issue of what to do in built up communities when two-story homes are proposed adjacent to single story homes. He said that through the architectural review process, the ARB and staff have been able to work with developers to provide windows that are offset or of a certain material so that potential conflicts are minimized, if not eliminated.

Mr. Oliver indicated that following this evening's Council approval, he will start to design the final map and improvement drawings. If he has to wait four months to go through an architectural review board before commencing design of the final map/improvement plans, it would result in time constraints. He noted that this project is behind. He said that he would need to proceed with minor changes quickly, which he is willing to do.

Mayor Pro Tempore Grzan noted that lots 9-16 are designed as two-story homes. He inquired whether Mr. Oliver could redesign to single story homes and increase the lot sizes.

Mr. Oliver said that he could not design single story homes and increase the lot sizes because the value of the land and the price paid for the property was based upon Measure C commitments and Measure C approval. When the project was developed by the applicant, they went through a Measure C process that

created the number of homes and the number of two-story homes that would comply with Measure C requirements. The project received approval/allotments. Based on this approval, commitments were made and the lots were priced based on the commitments. To request that the number of two-story homes be reduced as well as the number of homes, it would reduce the value of the project substantially; making the project infeasible because of the land price established.

Council Member Carr inquired whether the setbacks along Bel Air or Grand Prix are the same.

Mr. Oliver responded that the setbacks are similar. However, lot 15 could be pushed forward in order to achieve a larger back yard. He noted that Measure C requires that front and rear yard setbacks to be stepped. If Measure C relieves some of these requirements, a couple of the homes could be aligned. He stated that he would agree to increase the rear yard setbacks; resulting in the homes becoming more linear and closer to the street; resulting in a benefit to the neighbors.

Council Member Carr recommended the developer find ways to increase the size of the rear yards of the homes that have existing neighbors.

Mr. Oliver clarified that the BMR units are designed as two-story homes in order to provide four bedrooms and 2½ baths.

Mayor Kennedy supported swapping floor plans for lots 23 and 25.

Mr. Oliver stated that he would agree to swap lots 23 and 25 and provide some adjustments in setbacks along Bel Air Court, if provided the authority to do so by the Council. He would work with the Architectural Review Board to make these changes. He stated that he could not move lots 10 or 11 forward because of the 24-foot driveway setback. He said that Lot 12 could be moved forward a few feet; but that lot 13 could not be moved. He may be able to move Lot 14 forward and that Lot 15 could be moved up 4-5 feet. He said that it was his understanding that setback requirements for the first floor are 20 feet and 25 feet for the second floor. Moving the setback up by 5 feet would result in a 30 foot setback on the second floor and 25 feet on the first floor. He committed to moving the setbacks forward as far as he can and still achieve the 20 foot setback for the driveways.

Mayor Kennedy noted that this project went through Measure C to attain these allotments. He requested that the Council and residents' comments be forwarded to the ARB.

Roger Traverso concurred with the comments expressed by others this evening. He indicated that he owns a parcel located on Bel Air Way. He noted that there have been discussions about development along Grand Prix and Le Sabre Court. He was not sure whether Bel Air Way was addressed as far as lots 25 and 26 were concerned. He noted that the homes along Bel Air Way are all single family homes; expressing concern with privacy and obtrusiveness associated with the development of two story homes adjacent to existing single story homes. He addressed transitioning of development and felt that the proposed development is abrupt from the 1970s architectural design of the Blossom Hill tract to the two-story, more contemporary designed homes. He did not believe the site layout has the appropriate flow and would take away from some of the ambience of the neighborhood. If the development would locate single story homes adjacent to single story homes, it would mitigate concerns.

Mayor Kennedy noted the developer has agreed to incorporate some single family homes adjacent to existing homes as well as to increase the setbacks between two-story homes and existing single story homes. In addition, the residential project would be going before the ARB. He encouraged the residents to attend that meeting to share their concerns at that time as well.

No further comments being offered, the public hearing was closed.

Ms. Linder said that the home sizes range anywhere from 1,500-3,100 square feet. In response to Mayor Pro Tempore Grzan's question, she indicated that reducing the building footprint would provide additional relief to the backyard setback concern.

Mayor Pro Tempore Grzan noted that lot 16 appears to have adequate space to move to the right. He inquired whether there was sufficient space on the lot to make it a single story home.

Ms. Linder responded that staff could look to see if there is sufficient space to design a single story home on lot 16. Staff would also investigate rotating the building so that the building is not squared back to back with existing homes. She said that staff could ask the developer to consider a different model, if possible, in order to get a small footprint on the lot to allow for a greater setback. She stated that the Council can provide direction to the ARB (e.g., the ARB to look at the setbacks, window lineup, consider moving units forward, looking at rearranging some of the units to achieve greater setbacks, etc.).

Council Member Sellers indicated that he resides in an 80-year old house and has had development occur around them. There were two properties in the 1970s that had apartment complexes built on the backside. There are two story homes adjacent to his one story home and considers this to be far more intrusive than these homes. Adjacent to him, a home was recently built that was only five feet away and that it could have been more intrusive. He felt the difference was that the windows were designed higher and that the owners could not look down to the property below. Also, glass block was used in some of the area as well as a variety of architectural design and insulation factors that minimized the impacts to him and the surrounding neighborhood. He felt that these were all architectural issues and not issues for the Council to decide. He felt it important to understand that there is another step in the process that will go further than the Council can this evening. Further, the Council has made its intention clear about the placement of the second story units. He was confident that staff, working with the developer and understanding the community's needs and the Council's desire, they can make sure the impacts are minimized. He recommended the project is to be feathered, and if at all possible, to make this project one that everyone can be proud of, once built.

Mayor Pro Tempore Grzan stated that he has great sympathy for the area residents and that compatibility is an issue. It was his belief that if you have a single story home, a single story home should be built adjacent to it unless there are significant mitigating efforts made to allow a two story adjacent to a single story (e.g., significant setbacks so as not to be so intrusive). He felt that lots 10-16 should all be single story to lessen the impacts to the residents on Grand Prix Way. If there was something in Measure C that ties two-story homes along Grand Prix Way, the City needs to address this. It would be important to see compatible and non intrusive homes built along back sides of properties. He has seen communities not

allow two-story homes designed close to a single story home as it is unfriendly development to allow. He would like to see how the City can prevent this situation from occurring again in the future. The suggestion of a potential for the existing homes on Grand Prix Way to be converted to two-story homes sometime in the future is not for the Council to decide this evening. He felt that the Council was obligated to address the neighborhood concerns.

Council Member Carr thanked the residents for their correspondence and for coming before the Council, and to Mr. Oliver for his willingness to address some of the issues.

City Manager Tewes indicated that the Planning Commission scores Measure C applications; spending several hours on this application. He felt it might be appropriate, in the annual review of Measure C, to provide guidance to the Planning Commission on how they should apply the Measure C criteria. He stated that all issues were considered in the course of reviewing the Measure C applications.

Mayor Kennedy noted that Mr. Oliver and City staff have agreed to try and accommodate, to the greatest extent possible, the concerns raised by the neighbors. He noted that good suggestions were made this evening. He was confident that City staff and the ARB would be able to make further improvements to address concerns.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1781, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1781, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-1 7,000/RESIDENTIAL PLANNED DEVELOPMENT ON A 9.97 ACRE SITE LOCATED ON THE SOUTH SIDE OF EAST MAIN AVENUE APPROXIMATELY 400 FEET EAST OF THE CALLE MAZATAN/EAST MAIN INTERSECTION (APN 726-16-028) (ZA-05-05: EAST MAIN-MARRAD) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement Ordinance No. 1782, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1782, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION, DA-05-04 FOR***

APPLICATION MP-04-19: EAST MAIN-THRUST, APN 726-16-028, (noting comments expressed by Council) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

20. ZONING AMENDMENT APPLICATION, ZA-05-30: CITY OF MORGAN HILL-COCHRANE PLAZA – Ordinance No. 1783, New Series

Senior Planner Linder presented the staff report on a proposed amendment to the permitted uses for the Cochrane Plaza shopping center located on the southeast corner of the intersection of Cochrane Road and Sutter Boulevard. She noted that earlier this year, the Council approved a ballot measure that proposed an amendment to the PUD zoning for the shopping center. On June 6, 2006, 82% of the voters in Morgan Hill approved Measure H, an amendment to the permitted uses for the Cochrane Plaza Shopping Center. She indicated that the amendment would eliminate the prohibition against grocery supermarkets and add grocery supermarkets as a permitted use. She said that in anticipation of the certification of the election, the Council is being requested to review the implementation of Measure H that would require an amendment to Section II A.2 of Ordinance No. 835, New Series, as shown on the ordinance before the Council that strikes out the elimination of the exclusion of and addition of grocery supermarkets as a permitted use.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1783, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1783, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 835, NEW SERIES, SECTION II A. 2; ELIMINATING THE EXCLUSION OF GROCERY SUPERMARKETS FROM THE LIST OF PERMITTED USES ALLOWED WITHIN THE PORTION OF THE MORGAN HILL BUSINESS PARK ZONED COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD) (ZA-05-30: City of Morgan Hill-Cochrane Plaza) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

21. DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-09: EAST DUNNE-DELCO – Ordinance No. 1784, New Series

Senior Planner Linder presented the staff report on a request to amend an approved development agreement and to allow for an exception to loss of building allocations for eight allocations awarded for the Jasper Park project currently under construction. She informed the Council that the final map for this project has been recorded for the first two phases and that the applicant pulled the necessary building permits on May 19, 2006. Unfortunately, with the amount of rain seen this year, the applicant's soils engineer would not allow work and was concerned with certification of the building pads, a

requirement for meeting the commencement of construction threshold. She said that given the potential inability to meet the commencement of construction deadline, the applicant has filed an application for extension of time. She informed the Council that the Planning Commission considered the request and recommends Council approval of the three month extension.

Mayor Kennedy opened the public hearing.

Don Lapidus, project manager representing Delco Homes, informed the Council that he would answer any questions it may have. He confirmed the project got caught in the rain and the water remained on site; approximately 1-3 feet below the soil. Therefore, it took longer than they thought to commence construction.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1784, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1784, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A THREE MONTH EXTENSION OF TIME FOR COMMENCEMENT OF CONSTRUCTION FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDOS) COMPETITION. (APNS 817-11-067 & 817-11-072) (DAA-04-09: E. Dunne-Delco), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

22. DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-05: BARRETT-ODISHOO – Ordinance No. 1785, New Series

Senior Planner Linder presented the staff report on a request to amend an approved development agreement and an exception to loss of building allocations for the Villas de San Marcos project located on the southwest corner of the intersection of Barrett Avenue and San Ramon Drive. She informed the Council that the project was awarded five building allocations for Fiscal Year 2005-06 and that the current development agreement requires the applicant commence construction by June 30, 2006. She stated that the applicant is requesting a six-month extension because the project had a delay at the request of the City's Public Works Department. The Public Works Department looked at the project's offsite commitments to San Ramon Drive and recommended the project shift its commitments onto Railroad Avenue in order to complete the 100 foot gap in road improvements. In doing so, the applicant experienced a delay. The Planning Commission recommends Council approval of a five month extension to pull permits and a four-month extension to commence construction; giving the applicant

additional time to complete the improvement plans, record the maps and finish the building permit process.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1785, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1785, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1738, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-22 AND MC-04-13: BARRETT-ODISHOO, ALLOWING FOR A FIVE-MONTH EXTENSION OF TIME FOR OBTAINING BUILDING PERMITS AND A FOUR-MONTH EXTENSION TO COMMENCEMENT OF CONSTRUCTION OF 5 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION (APN 817-33-003) (DAA-04-05: Barrett-Odishoo), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

City Council and Redevelopment Agency Action

OTHER BUSINESS:

23. MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) FUNDING REQUEST

Director of Business Assistance and Housing Services Toy presented the staff report. He said that this item would authorize the Executive Director to prepare and execute an agreement with the Morgan Hill Downtown Association (MHDA) to fund their operations for Fiscal Year 2006-07. He informed the Council that in June 2006, the Council approved a resolution to initiate a special assessment proceeding to form a Property Based Improvement District (PBID) in the downtown. He said that the PBID would provide funding for services related to capital improvements, economic development and marketing, pedestrian safety, etc. He informed the Council that the public hearing to count the ballots is set for July 26, 2006. He informed the Council that at the June 2006 meeting, MHDA indicated that they would return to the Agency Board with their funding request this evening. The funding request is for \$75,000 in matching funds for the PBID budget. He said that the MHDA has indicated that providing funding at this time would allow them to hire the best executive director; given that the current executive director is leaving in June. He indicated that Agency funds would continue to fund the current operations of the MHDA as well as the future management of the PBID. Should the PBID ballot pass, an owners association would be elected and formed and that the owners association would fall under the umbrella of the MHDA. He indicated that staff considered other options and give consideration to the management structure for the PBID (e.g., contract with another entity besides the MHDA to operate the

PBID; city to operate the PBID; or city to provide funding at a lower level). He stated that staff is supporting the request of \$75,000 in order to provide the PBID the ability to achieve success the first year. After the first year, staff is recommending that the MHDA and City staff sit down to determine the appropriate level of funding to operate the PBID and the operations of the MHDA. If the PBID is not created, the funding would be used to wind down the operations of the MHDA.

Mayor/Chairman Kennedy opened the floor to public comment.

Gary Walton, President of the MHDA, requested Council/Agency continued support of the Downtown Association. He addressed the Downtown Association's accomplishments in the downtown over the past four years (e.g., special events, marketing the downtown, beautification programs, art programs, institution of a national main street forum, newsletter, bulletins, four annual membership meetings, crime prevention, traffic calming, economic development, etc.). He stated that the budget request before the Council is a bare bones budget. He noted that the MHDA will need to hire a new executive director. If the PBID passes, it would be a 50-50 partnership with the City and be the second step toward revitalizing the downtown. He stated that he forwarded a letter and a copy of the budget to the Council. He read a section from a book titled *Main Street Renewal, a Handbook for Citizens and Public Officials* regarding government's role in downtown revitalization; specifically, city halls' involvement ending after three years. He said that the book states that downtowns are never finished as the market is in constant flux and that it demands permanent management if it is to stay attractive and economically sound. Therefore, a commitment to this level of long term development remains permanent and that the public/private partnership is necessary to initiate a downtown program. He felt it important to continue the private/public partnership as it is a good business practice. He noted the City has invested a substantial amount of money for physical improvements in the downtown. He felt the \$75,000 would protect the City's investment and is a wise business decision. He requested the Council continue funding the MHDA so that the City's substantial investment in the downtown is protected.

Dan Ehrler stated the Chamber's strong support of the MHDA. He felt the Council/Agency's action this evening and what is being requested in the executive director position, is critical to the success of an organizational structure. He said that the director will be the driver who will help make the MHDA's vision come true and make the program succeed.

Dan Craig said that with his 20-years in the industry, having assisted three communities, and having consulted with numerous other towns, the commitment to funding varies in every town. However, he has never seen funding be for only 3-years. It was his belief that a city's funding commitment extends beyond three years.

No further comments were offered.

Council/Agency Member Tate said that he supports the direction of the PDIB, but that it should be an objective to make the MHDA a 50/50 (equal) partnership.

Council/Agency Sellers indicated that the Economic Development Committee reviewed the request by the MHDA and that the Committee recommends the City include both the Redevelopment Agency Plan Amendment and the PBID for consideration. Also, discussed was a course of action to take should one

or both of these items not pass. He agreed that this is a partnership that varies and that the City would start to see a shift. He stated that this is a big year for the downtown in terms of structural changes that will be seen at Depot and other places, and with the PBID coming on line. He said that he was instrumental in bringing Mr. Craig to Morgan Hill as he was familiar with his work. He felt the City was fortunate to have him here. Although Mr. Craig is leaving his post on the MHDA, he was pleased to hear that he would be remaining in Morgan Hill; looking at starting his own business in the downtown. Therefore, he felt Mr. Craig would continue to contribute to the downtown and that his expertise would come into play in the MHDA and the efforts to be undertaken by the City in the coming years.

Action: *Council/Agency Member Sellers made a motion, seconded by Council/Agency Member Tate, to **Authorize** the Executive Director to Negotiate, Prepare, and Execute an Agreement with the MHDA in an amount of \$75,000, Subject to Agency General Counsel Approval, to Fund the Operations of the MHDA for Fiscal Year 2006-2007.*

Mayor Pro Tempore/Vice-chair Grzan noted that this evening, the Council/Agency approved \$125,000 to the Chamber and would be acting on granting another \$75,000 to the downtown district, a \$200,000 investment. Although these are worthwhile activities, he expressed concern the City would be diverting \$200,000 from the street funds as streets are intrical to the City's infrastructure. Should the City not have enough money in the street funds, there will be problems in the future. While he understands the value of these issues, he did not know how the City could fund these agencies.

Council/Agency Member Carr stated that the Economic Development Committee has spent time on this item and spent time with the MHDA discussing this budget. Therefore, the Committee has had a greater opportunity to study this item in depth. He clarified that these dollars are coming from the Business Assistance and Housing Services budget that is being funded through the Redevelopment Agency and economic development dollars; not from general fund dollars. He agreed with Council/Agency Member Tate that the goal needs to be of getting to an equal partnership, and ultimately trying to get to a place where less public dollars are going into this. He was not sure the City would see the day where public dollars would not be going into the downtown at some level, but that the PBID needs to get to place where it is sustainable on its own. It was his belief that the MHDA Board agrees with this direction.

Vote: *The motion carried unanimously (5-0).*

City Council Action

OTHER BUSINESS:

24. WATER PRESSURE REDUCTION INCENTIVE PROGRAM

Director of Public Works Ashcraft indicated that this item is a result of two property owners from the Woodland Acres area approaching the City last fall about their concern about water pressure issues in the City. He said the Utilities and Environment Committee is recommending Council support of a water pressure reduction incentive program. He said that there will be approximately 62 residents in the City who will have water pressures over 150 psi, following the completion of the City's capital project to

reduce water pressure in certain areas of the City. Staff will contact the 62 property owners and inform them of the City's incentive program whereby the City would be willing to pay half of the cost up to \$700 of installing a new pressure regulator valve.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Pro Tempore Grzan stated that there are some high pressure areas in the City and that this program will take out a significant number of homes from high pressure areas. He indicated that the Utilities and Environment Committee supports and recommends approval as it is in the best interest of the community and the residents. It also gives residents some assurances the issues that occurred last fall would be less likely to occur in homes that take advantage of this program.

Mayor Kennedy informed the Council that when the Committee first began the series of meetings on this issue, there were a lot of upset/angry residents. By the time the work was completed and public works staff came up with this program, it was a successful resolution. He felt the neighbors are pleased and satisfied with the ultimate recommendation before the Council.

Action: *On a motion by Mayor Pro Tempore Grzan and seconded by Mayor Kennedy, the City Council unanimously (5-0) **Directed** Staff to Implement a Water Pressure Reduction Incentive Program.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Pro Tempore Grzan indicated that a week ago, a young man died on DeWitt Avenue on what he considers to be one of the most dangerous curves in Morgan Hill. He requested that staff return with suggestions on how to mitigate the s-curve in the future.

Mayor Kennedy supported adjourning the discussion of identifying mitigation measures to the s-curve portion of DeWitt Avenue, between Spring and Edmundson Avenues. He noted that there have been two young men who have died in this location.

City Manager Tewes informed the Council that staff has initiated conversations with County staff about safety measures that are in place and what other safety measures could be made; noting that this is a county road. He stated that the County has indicated there may be a grant opportunity and that City staff would support the County in their application to address these issues. He said that ultimately, the road needs to be straightened out.

Mayor Kennedy requested a County representative be invited to a Council meeting when this item comes back to the Council.

Mayor Pro Tempore Grzan clarified that he would like staff to return to the Council with the County's efforts to mitigate the s-curve on DeWitt Avenue; discussing ways to correct/mitigate the situation. To be discussed are interim measures until such time the road can be straightened (e.g., widen the road, install guard rails, install buffers).

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:25 p.m. (Note: The Council adjourned to closed session under the Special Meeting Agenda as it relates to the City Manager's Performance evaluation.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

ZONING AMENDMENT, ZA-05-09 & DEVELOPMENT AGREEMENT DA 05-08: CHURCH-ALCINI

RECOMMENDED ACTION(S):

1. Close Public Hearing
2. Motion to approve the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
3. Waive the reading in full of the Zoning Amendment Ordinance
4. Introduce on first reading the Zoning Amendment Ordinance (roll call vote)
5. Waive the reading in full of the Development Agreement Ordinance
6. Introduce on first reading the Development Agreement Ordinance

EXECUTIVE SUMMARY:

A request for approval of a 3.5 acre, mixed use (44 units + 11,200 sq. ft. commercial space) Planned Unit Development PUD and a development agreement for a project proposed on the north east corner of the intersection of Monterey Rd. and Biscaglia Ave. This application was continued from the Council's June 21 meeting. At that time, the applicant had requested additional time to meet with the City's Public Works department to discuss per unit in-lieu fees for off-site and on-site improvements.

The proposed zoning amendment would establish a precise development plan which contains the following: 12 single-family attached units, 2 single-family detached units, 30 multi-family residential units, 11,200 sq. ft. of ground floor commercial space, 115 space parking lot, a 6,173 sq. ft. park area which contains a 1000 sq. ft. recreation building, a detention pond and a tot lot with three activities and a gazebo.

The proposed 44 unit project is a result of combining two separate side by side RDCS projects (Monterey-Alcini MC 05-05 and Church-Alcini (MC 04-15) into one precise development plan. The combined project layout is basically consistent with the individual RDCS applications but the once separate project amenities have been combined. The mixed use RDCS application (MC 05-05) had a 3,100 sq. ft. open space area with a 1000 sq. ft. recreation building located within the center of the parking lot area. The Church St. RDCS application (MC 04-15) proposed a 4,200 sq. ft. area that contained a tot lot and gazebo. Combining the common areas allows for a larger park area, shared amenities, a centralized storm water detention area and a combined HOA. The proposed PUD exceeds the minimum requirement by providing 115 spaces within the parking lots area plus another 28 spaces within the single family attached portion of the project.

In accordance with established Council policy, all residential projects awarded building allotments through Measure "P" must secure Council approval of a development agreement. Development agreements are required as a formal contract between the developer and the City. The Development Agreement proposed at this time covers only the RDCS commitment made in application MC 04-15 which is the 14-unit single family detached portion of the precise development plan. The mixed use portion of the project will require a separate development agreement. The 2004 Measure "C" commitments and a processing schedule are included within the agreement. (See Exhibit "B" of the agreement for schedule.)

Commission considered the Zoning Amendment and Development Agreement at the June 27, 2006 meeting and voted 6-0 (Escobar absent) to recommend Council approval. The Commission also voted to recommend approval of the project's Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. The Commission's staff report is attached for Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover processing of this application.

Agenda Item # 20

Prepared By:

Senior Planner

Approved By:

**Community
Development Director**

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT ON A 3.5 ACRE SITE LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE (APNs 817-01-061, 062, 063 & 064) (ZA-05-09: Church-Alcini)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration is hereby adopted.

SECTION 4. The City Council finds that the proposed PUD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The City Council hereby amends the City Zoning Map as shown in attached Exhibit "A".

SECTION 6. The City Council hereby approves the precise development plan as contained in that certain series of documents dated June 2, 2006 (date of receipt by the Community Development Department) on file in the Community Development Department, entitled "Rancho Del Pueblo/Monterey Station" prepared by MH Engineering and as amended as follows:

(1) The park layout configuration shown on the site plan provided by the Hagman Group dated May 15, 2006 shall be used.

(2) Final park details such as the tot lot placement and gazebo shall be reviewed and approved by the Architectural and Site Review Board.

(3) All floor plans & elevation shall be reviewed by the Architectural and Site Review Board (ARB) prior to final map approval. A site plan shall be provided to the ARB indicating where each model and elevation will be used.

(4) Detached garages shall be setback 5 ft. and be a maximum of 15 ft. in height.

(5) Development within this PUD shall function as a single project with common .31 acre park, shared park amenities, shared detention pond, reciprocal accesses easements, a single HOA and a single set of CC & Rs.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the _____ Day of July 2006, and was finally adopted at a regular meeting of said Council on the _____ Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the _____ Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-08 FOR APPLICATION MC 04-15: CHURCH - ALCINI (APN 817-01-061 & 064) (ZA-05-09: CHURCH-ALCINI)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded MC 04-15: Church-Alcini, 14 building allocations for fiscal years 2006-07 to application MC 04-15 to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling</u>
MC 04-15: Church-Alcini	FY 2006-07 (14 units)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 19th Day of July 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

**RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2006, by
and between _____, under the Agreement, ("Property Owner") and
the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws
of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On _____, 2006, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2006.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On March 1, 2005, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MC-04-15: Church-Alcini, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 14 residential units as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Mixed Use and zoning classification of PUD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **School** features in the development:

(i) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(ii) Provide off-site safety improvements valued at \$3,300 per unit based on the Safe Walking Route to School Study or; Any other improvements equal to \$3,300 per unit to be determined by the Morgan Hill Unified School District

(i) Property Owner agrees to include the following **Open Space** improvements in the development:

(i) All parks and open space within the project will be maintained by a neighborhood homeowners association.

(ii) Project has committed to pay double the per unit Downtown Open Space Amenity fee in an amount equal to the most recent adjusted open space fee. The amount of the open space fee shall be based on the average cost per dwelling unit for an equivalent Transferable Development Credit TDC, and will be collected on a per unit basis at the time of the issuance of a building permit. The current open space rate is \$36,880 per TDC which equals \$1,475.20 per unit (based upon the cumulative project to date ratio of one TDC for every twenty-five dwelling units proposed.) The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 2005.

(j) Property Owner agrees to include the following **Public Facility** features in the development:

- (i) The project shall grid water mains into the existing water system.
- (ii) The project drainage shall be consistent with the City's storm drain system.
- (iii) Project commits to install public facilities as directed/designated by City at a cost of at least \$4,400, over and above other commitments, per allocated unit or contribute \$4,400 to the Measure C, Capitol Improvement Fund to be used within the Downtown for a similar project.
- (iv) Project storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works.
- (v) Applicant will contribute \$ 1100 per unit to the Local Drainage Non-AB1600 fund for off-site storm drainage improvements, in addition to payment of standard fees.
- (vi) In-lieu of the widening of Bisceglia Ave. from Church St. to Monterey Rd. at \$4,533 per unit, the developer will contribute \$4,533 to the Measure C Capitol Improvement Fund to be used within the Downtown for a similar project..

(k) The Property Owner agrees to provide the following **Park and Recreation** improvements:

- (i) In addition to payment of standard park fees, the applicant will pay the lesser of triple the required in lieu park fees up to \$ 6600 per unit.
- (ii) The project will install the following pedestrian and bicycle improvements beyond the project frontage:
 - The developer agrees to provide one-quarter mile of Class II bike lane improvements per 10 units along Church or per city preference that conforms to this criteria.
- (iii) The project shall provide the following park amenities within the proposed park: Landscaping, shade trellis and tot lot with a minimum of 3 activities.

(l) Property Owner agrees to include the following **Housing Types & Housing Needs** in the development:

- (i) Project shall provide the following housing types:
 - 2 Moderate Rate*: 3 bedroom, 3 bath and approx. 1600 sq. ft.
 - 1 Low income BMR: 3 bedroom, 3 bath and approx. 1600 sq. ft. plus .30 of the standard housing mitigation fee.

4 Units (25%) shall have porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project

7 Units (50%) shall have side-loading, detached, rear garages, or two car garages with tandem parking space. to accommodate a third vehicle inside the garage.

*The final sales price (at close of escrow) for the two moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

(ii) Over and above the BMR units, the project provides:
3 additional 10% detached units.

(iv) The Property Owner shall provide at least (one) (1) of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. The BMR unit shall be under construction and the framing inspection passed prior to the issuance of a certificate of occupancy on the 14th building permit.

(v) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(vi) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.

(vii) Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.

(viii) The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.

(ix) Exterior trim entry door hardware, and finish to the same standard as the Market Rate.

(x) Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.

- (xi) Minimum Interior standard finishes will be as follows:
- All closets shall have doors
 - Interior doors to be raised panel type or same as market rate
 - Door hardware to be brass finish or the equivalent
 - Appliances shall be major brand name
 - Microwave with an exhaust vent shall be installed over the range.
 - Kitchen counters shall be white ceramic tile
 - Kitchen cabinets shall be stained wood with white melamine interiors
 - Units will be roughed in for AC including electrical and line set.
 - Basic alarm system to secure all accessible openings to the home
 - Carpet in bedrooms, hallways, family rooms
 - Linoleum or tile in entry, bathrooms kitchens
 - Laminate flooring may be substituted for carpet or linoleum
 - Electric garage door opener

(m) Property Owner agrees to include the following **Quality of Construction** features in the development:

- (i) All homes will have EPA “Energy Star” labeled windows with low-e coatings and vinyl or metal frames,
- (ii) Installation of a high efficiency gas furnace of 90 percent efficiency rating or greater in all dwelling units.
- (iii) Installation of air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher.
- (iv) Installation of a high efficiency gas furnace with an efficiency rating of 90 percent or greater, in all units
- (v) Installation of a HERS (Home Energy Rating System) certified heating and air conditioning (HVAC) system with all duct work tested and certified to achieve a minimum 3 percent savings in the home energy budget.
- (vi) All homes to be fitted with on demand re-circulating hot water system with demand pumping.
- (vii) Point of use water heater.
- (viii) Restricted flow showerheads.
- (ix) Reverse Osmoses filtration system at all kitchen sinks.
- (x) Installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing.
- (xi) Installation of future ready wiring concepts such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines.
- (xii) Central home Patch and Router Panel for networking.

- (xiii) Class A roof covering, concrete or better.
- (xiv) Glued and screwed sub-floors.
- (xv) TJI silent floor joists and JST floor systems.
- (xvi) Installation of sound deadening board and fiberglass batt wall insulation selected interior walls.
- (xvii) Pre-plumb gas lines to dryer along with 220 volt outlet.
- (xviii) All garages to be finished with GYD wallboard - tape, stipple painted.
- (xix) Use at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc.
- (xx) Each standard trim and base color must represent no more than 15 of the project

(n) The Property Owner agrees to provide the following **Circulation** improvements:

- (i) Provides for dedication and improvement of extensions to existing streets or shared parking lots outside of the project boundaries. The cost of the offered dedication and public improvements shall be equal to or greater than \$2200 per unit or the \$2200 per unit amount shall be contributed to the Measure C Capitol Improvement Fund to be used within the Downtown for a similar project.

(o) The Property Owner agrees to provide the following **Safety and Security** improvements:

- (i) Provides fire escape ladders for upper floor bedrooms and one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, and one additional extinguisher for each additional 1,500 square feet of floor space or fraction thereof.
- (ii) Provides a first aid kit with a poison control document to be installed in the kitchen area of the home.
- (iii) Provide outdoor lighting to meet all police department specifications.
- (iv) Provide a hardwired carbon monoxide detection device or devices with battery backups to be located per manufacturer's requirement with at least one detector per floor of the residence.
- (v) Install illuminated address numbers for each unit and painted reflective curb numbers where possible.
- (vi) Noncombustible siding is used on at least 75 percent of the total units and comprises at least 50 percent of the siding of an individual unit.

(vii) Neighborhood Emergency Preparedness Program administered through a homeowners association or central property management.

(p) improvements:

The Property Owner agrees to provide the following **Landscaping**

(i) Twenty-four inch box-size trees from a city approved list, with a minimum height of nine feet and a spread of three to four feet. The box-size trees will be provided within the development at a ratio of one box-size tree per ten trees provided with the landscape area to be installed by the developer. The one box size tree per ten trees calculation does not include street trees.

(ii) Sufficient planting shall be provided around all necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.

(iii) Varied front yard landscaping plans are installed by the developer.

(iv) Deciduous trees will be planted along the south facing side of homes or buildings.

(v) All street trees are twenty-four inch box trees from the city approved list.

(vi) Project provides street trees consistent with the Street Tree Master Plan that addresses tree selection, location of trees on each lot, proper tree spacing, and preservation of any existing trees.

(vii) Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn. The twenty-five percent lawn coverage calculation is exclusive of landscape area within parks.

(viii) Automatic irrigation systems utilize separate valves and circuits for trees; shrubs and ground covers; and lawn areas. Minimum of three separate valves required. A separate valve shall be provided for the following areas: front lawn, rear lawn, and for trees, shrubs and groundcover (combined) where viable. If trees, shrubs, and groundcover cannot be combined under 1 valve, a separate valve for trees shall be provided, resulting in a minimum of 4 separate valves required. Water conserving irrigation system is also used within the development, i.e., drip irrigation.

(ix) The landscape to be installed by the developer will include hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area. Pedestrian walkways across circulation aisles are not included in this item.

(x) For at least 75% of all plant material, uses water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.

(xi) Project provides a separate water source (e.g., well, import or recycled water) to irrigate common area landscape areas and front yard areas that are maintained by a homeowners association.

(xii) Landscaping shall be installed on all areas visible from public and private rights-of-way.

(xiii) Project uses pervious pavement in all open parking lots, driveways and sidewalk areas to minimize drainage runoff.

(q) The Property Owner agrees to provide the following **Natural and Environmental** improvements:

(i) Minimal grading is required which is considered a fill or excavation of less than two feet in depth (three feet is acceptable for detention ponds).

(ii) Dry wall is source separated and recycled.

(iii) Wood waste is source separated for recycling or composting.

(iv) Cardboard containers and boxes are source separated and recycled.

(r) The Property Owner agrees to provide the following **Livable Community** improvements:

(i) Provides low-maintenance on-site walkways and on-site bike paths throughout the development. Installation of city standard sidewalks, or pathways which are redundant of city standard sidewalks do not fulfill this requirement.

(ii) Project will construct a bus stop or improvements per VTA will be constructed to conform to VTA standards and these improvements are located on an approved or planned Valley Transportation Agency (VTA) transit route and accepted by the VTA for maintenance.

(iii) Project will provide standard sidewalk and bicycle striping and legends per stated requirements at a cost of \$3,300 per unit. In lieu of this commitment, the project will contribute \$3,300 per unit to the MC Capitol Improvement Fund to be used within the Downtown for a similar project.

(s) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(t) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
----------------------	---

With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
-----------------	---

Property Owner:	Alcini Partnership Attn: Paul Schuyler 20711 Leonard Road Saratoga, Ca. 95070
-----------------	--

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

JANET KERN, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MC-04-15: Church-Alcini

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"
DEVELOPMENT SCHEDULE MC-04-15: Church-Alcini:
FY 2006-07, 14 allocations

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	08-18-05
II.	SITE REVIEW APPLICATION	
	Application Filed:	07-30-06
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds: FY 2006-07	10-30-06
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check: FY 2006-07	11-15-06
V.	BUILDING PERMITS	
	Obtain Building Permits: FY 2006-07	02-28-07
	Commence Construction: FY 2006-07	04-30-07

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

**LEGAL DESCRIPTION
MC-04-15: Church-Alcini**

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

APN 817-01-061

All that portion of land designated and delineated as "Parcel B" in the Certificate of Compliance filed for record in the Office of the Recorder of the County of Santa Clara on June 18, 1993 under Recorder's Series No. 11957472, Official Records and being more particularly described as follows:

A portion of Lot5, as shown upon that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on April 5, 1897, in Book I of Maps, at Page 59, more particularly described as follows:

BEGINNING at the point of intersection of the South westerly line of Church Street with the Northwesternly line of said Lot, as shown on said Map and running thence along the Southwesterly line of Church Street South 24° 40' 30" East, 114.29 feet; thence leaving said line and running South 64° 19' 30" West, 209.00 feet; thence North 24° 40' 30" West, 114.29 feet to a point in the Northwesternly line of said Lot 5; thence along said Northwesternly line North 64° 19' 30" East, 209.00 feet to the point of beginning.

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

APN 817-01-064

Parcel 3, as shown on the Parcel Map filed September 7, 2000 in Book 731 of Maps, pages 22 and 23.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 19, 2006

ZONING AMENDMENT & SITE REVIEW APPLICATIONS ZAA 03-03/SR 06-03: FOOTHILL-THE INSTITUTE.

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Adopt Environmental Impact Report (EIR) Addendum
3. Waive the First and Second Reading of Ordinance
4. Introduce Ordinance Amending a Planned Unit Development zoning and Precise Development Plan for the subject parcels
5. Adopt Resolution Approving a Site Review Permit and an exception to the underground utility requirement

EXECUTIVE SUMMARY: A request to amend an existing Planned Unit Development (PUD) zone and Precise Development Plan, Site Review Permit, and an exception to the underground utility requirement for an approximately 167,500 sq. ft. above ground mathematics conference center with a 34,385 sq. ft. underground garage and a new 185 space surface parking lot to replace an existing 121 space parking lot on an approximately 54 acre site located at 14830 Foothill Avenue (APN's 825-30-007 and 825-29-002).

In 2004, the City Council certified an EIR and Mitigation Monitoring and Reporting Program (MMRP) and approved a Precise Development Plan as part of a PUD rezoning of the subject parcels to allow the continued operation and maintenance of an 18-hole golf course, the demolition of an existing 58,946 square foot restaurant (former *Flying Lady* restaurant) and replacement with a mathematics conference center, and the renovation and use of other structures on the project site. The PUD ordinance stipulated that the maximum size of the mathematics conference center was to be 59,000 square feet.

Approval of the applications currently before the City would allow for the larger conference center and parking lot. Although the size of the building is proposed to increase, the use of the facility will remain as a non-profit educational conference center for the American Institute of Mathematics (AIM), the operational characteristics of which are more fully described in the attached EIR Addendum. According to the applicant, the reasons for the larger building are: 1) To replicate, as close as possible, *The Alhambra*, a Moorish Castle in Granada, Spain; and, 2) To meet the needs of AIM, which have now been more clearly defined. The applicant is also requesting an exception to the underground utility requirement, which staff supports since the parcel is located in a rural area surrounded on nearly all four sides by unincorporated land.

To address California Environmental Quality Act requirements, an EIR Addendum has been prepared, which concludes that the impacts and mitigation measures in place for the previously certified EIR are adequate to address the changes resulting from the PUD amendment.

On May 18th, the Architectural Review Board (ARB) unanimously recommended City Council approval of the Site Review permit (see attached ARB minutes). On June 27th, the Planning Commission voted 4-2 (Acevedo and Escobar opposed, Lyle absent), to recommend City Council adoption of the EIR Addendum, approval of the PUD, Precise Development Plan amendment and an exception to the underground utility requirement (see attached draft Planning Commission minutes). The attached Planning Commission staff report provides a more detailed analysis of the applicant's proposal.

FISCAL IMPACT: It is expected that individuals attending periodic conferences and workshops will patronize local businesses and visitor-serving establishments thereby generating additional general fund revenues.

Agenda Item # 21

Prepared By:

Senior Planner

Approved By:

Community
Development Director

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO A PRECISE DEVELOPMENT PLAN FOR AN EXISTING PLANNED UNIT DEVELOPMENT (PUD) ORDINANCE (ORDINANCE NO. 1687) TO ALLOW AN APPROXIMATELY 167,500 SQUARE FOOT ABOVE GROUND MATHEMATICS CONFERENCE CENTER WITH A 34,385 SQUARE FOOT UNDERGROUND GARAGE AND A NEW 185 SPACE SURFACE PARKING LOT TO REPLACE AN EXISTING 121 SPACE PARKING LOT ON AN APPROXIMATELY 54 ACRE SITE LOCATED AT 14830 FOOTHILL AVENUE. (APNS 825-30-007 AND 825-29-002) (ZAA 03-03: Foothill – The Institute)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zoning amendment is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An Addendum to the Environmental Impact Report (EIR) certified by the City Council on July 7, 2004 has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act (CEQA). The City Council finds that an EIR Addendum is the appropriate course of action under CEQA in that the environmental analysis therein concludes that the impacts and mitigation measures in place for the certified EIR are adequate to address the changes resulting from the PUD amendment. Responses received during the Notice of Preparation comment period did not raise any new significant environmental issues for the project. None of the conditions that would call for preparation of a Supplemental or Subsequent EIR have occurred.

SECTION 4. The City Council hereby approves an amendment to the Precise Development Plan as contained in that certain series of documents on file in the Community Development Department, entitled "AIM Research Conference Center" prepared by Stotler Design Group date stamped May 12, 2006. These documents, as amended by site and architectural review, show the exact location and sizes of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 5. The City Council hereby amends Section 6 of Ordinance No. 1687 to read as follows:

Approval of The Institute PUD shall allow the specific uses identified in the applicant's "Use Data Table" dated February 7, 2006, attached hereto as Exhibit "B", and by this reference incorporated herein. Those uses shall include the following:

1. AIM Research Center (includes research facility, library, conference rooms, guest suites, lecture halls, food service, offices, bookstore/pro shop, gym, locker rooms) (approximately 62 feet in height and 167,500 square feet with an approximately 34,400 square foot garage)
2. Golf course (128 acres)
3. Residence
4. Offices
5. Lecture hall
6. Caretaker's quarters
7. Equipment storage
8. Maintenance sheds
9. Food service
10. Guard building
11. Pro shop
12. Restrooms
13. Open Space

SECTION 6. Development of this PUD shall be in accordance with the development standards for PUDs, Chapter 18.30 of the Zoning Code, identified herein by reference in the resolution.

SECTION 7. Approval of this PUD amendment does not include approval of "charity golf tournaments" as identified in the applicant's use table, as such use has not been evaluated for its potential environmental impacts. Such use will require a subsequent amendment to the approved PUD upon further environmental review.

SECTION 8. Conditions of Approval. All conditions of approval contained in Ordinance No. 1687 shall remain in full effect.

SECTION 9. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 10. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the Day of June 2006, and was finally adopted at a regular meeting of said Council on the Day of July 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING SITE, LANDSCAPE AND ARCHITECTURAL PLANS AND AN EXCEPTION TO THE UNDERGROUND UTILITY REQUIREMENT FOR AN APPROXIMATELY 167,500 SQUARE FOOT MATHEMATICS CONFERENCE CENTER WITH A 34,385 SQUARE FOOT UNDERGROUND PARKING GARAGE AND A NEW SURFACE PARKING LOT TO REPLACE AN EXISTING PARKING LOT ON A SITE OF APPROXIMATELY 54 ACRES LOCATED AT 14830 FOOTHILL AVE WITHIN THE PLANNED UNIT DEVELOPMENT ZONING DISTRICT. (APN's 825-30-007& 825-29-002)

WHEREAS, the Site Review application (SR-06-03: Foothill – The Institute) was considered by the Architectural Review Board (ARB) at its regular meeting of May 18, 2006 at which time the Architectural Review Board recommended approval; and

WHEREAS, the underground utility exception was considered by the Planning Commission at its regular meeting of June 27, 2006 at which time the Planning Commission recommended approval; and

WHEREAS, both the Site Review application and the underground utility exception were considered by the City Council at its regular meeting of July 19, 2006; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The project is consistent with the Zoning Ordinance and the General Plan, and the City Council hereby approves the project by adoption of this resolution.

SECTION 2. Although the maximum height limit in the underlying zoning district is 25 feet, the Zoning Ordinance allows places of public assembly, such as schools and other public and semi-public buildings to exceed height provided that side and rear yard setbacks are increased by one foot for each additional foot of height to a maximum of 50 feet, unless otherwise approved by the ARB. Using the methodology contained in the building height definition, the conference center has been calculated to be 62 feet high. With proposed side and rear setbacks of 270 and 300 feet, respectively, the building can exceed 50 feet in height. The visual simulations prepared for the project demonstrate that the project does not constitute ridgeline development and is not a focal point from any significant public viewing area. Further, the site is not within a designated scenic corridor. The City Council therefore supports the height of the building as proposed and recommended for approval by the Architectural Review Board.

SECTION 3. In accordance with Section 12.02.190 of the City of Morgan Hill Municipal Code, the City Council may grant exceptions to the underground utility requirement upon recommendation from the Planning Commission with the following affirmative findings:

1. That there are special circumstances and conditions affecting the subject property;
2. That the exception is necessary for the preservation and enjoyment of a substantial property right of the developer;
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which said property is situated.

The City Council hereby makes these findings in the affirmative based upon the fact that the subject parcel is located in a rural area of the City surrounded on nearly all four sides by unincorporated property.

SECTION 4. An Addendum to the Environmental Impact Report (EIR) certified by the City Council on July 7, 2004 has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act (CEQA). The City Council finds that an EIR Addendum is the appropriate course of action under CEQA in that the environmental analysis therein concludes that the impacts and mitigation measures in place for the certified EIR are adequate to address the changes resulting from the PUD amendment. Responses received during the Notice of Preparation comment period did not raise any new significant environmental issues for the project. None of the conditions that would call for preparation of a Supplemental or Subsequent EIR have occurred.

SECTION 5. The approved project shall be subject to the conditions attached hereto as Exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the Day of July, 2006 by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

∞ CERTIFICATION ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on July _____, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

A F F I D A V I T

I, _____, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By:

Ramune Ambrozaitis
Director of Construction and Energy

Date

Exhibit "A"
Conditions of Approval
SR-06-03: Foothill – The Institute

1. The Site and Architectural approval granted under this Resolution shall remain in effect for one year from the date of City Council approval. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date.

(PLNG - MHMC 18.74.250)
2. Final site development plans shall be reviewed and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:
 - a. Detail depicting all concrete curbs as full formed.
 - b. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing. (MHMC 18.74.370)
 - c. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities. (MHMC 18.50.110; 18.74.470)
 - d. Trash enclosures shall be constructed of a sturdy, opaque material, minimum 6 feet in height with solid view obstructing gates and shall be designed in harmony with the architecture of the building(s). (MHMC 18.74.505)
 - e. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. (MHMC 18.74.320) For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
 - f. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building. (PLNG)
3. All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 ft. or greater to match the height of any proposed equipment. (PLNG - MHMC 18.74.320)
4. Roof top lighting is not approved for any building within the project. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development. Adjustment to the lighting intensity may be required after the commencement of the use. All parking lot lighting shall be high pressure sodium. (PLNG)
5. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior. (PLNG - MHMC 18.74.360)
6. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building. (PLNG -MHMC 18.74.340)
7. The applicant shall enter into a two-year landscape maintenance agreement effective upon acceptance of landscaping improvements and provide an appropriate bond as required by Section 18.74.560(d) of the Design Review Ordinance. Bond amount shall be based on the assigned value of \$2.50 per square foot of area of planting and irrigation improvements. (PLNG -MHMC 18.74.560)
8. Detailed landscape planting and irrigation working drawings shall be submitted to the Community Development Department for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement

EXHIBIT “A” – CONDITIONS OF APPROVAL

plan submittal. **(PLNG)**

9. All trees within approved landscape plans shall be of a minimum fifteen gallon size, except for the nine olive trees lining the pedestrian walkway in the center of the parking lot, which shall be 24-inch box. The nine olive trees shall be located within a minimum 42-inch container. All shrubs shall be minimum 5 gallon size unless otherwise approved by the Community Development Director. **(PLNG)**
10. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this conditional use permit. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions. **(PLNG)**
11. Submit two (2) signed copies of Approval Certificate/Resolution No. _____ to the Planning Division prior to issuance of building permits. **(PLNG)**
12. The applicant shall be subject to compliance with the mitigation measures of the project environmental assessment. **(PLNG)**
13. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. Should the applicant propose the use of development and/or construction standards for any improvement and/or land uses, which are different than those presently set forth in the City's codes and ordinances, such alternative standards must be presented and approved by the Director of Public Works. The applicant shall cause Standard Specifications and Standard Drawings to be prepared in a format to be approved by the Director

of Public Works. **(PW-MHMC 17.32.080)**

14. Obtain necessary encroachment permits from City of Morgan Hill/County of Santa Clara/ State of California/ Santa Clara Valley Water District, and provide guarantee covering off-site improvements. **(PW-MHMC 12.08.040 A)**
15. Enter into an Improvement Agreement with the City of Morgan Hill to cover required improvements. **(PW-MHMC 17.32.160)**
16. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established ten specific categories of impact fees to finance the cost of improvements required by new development. The City Council has chosen to implement certain fees, withhold implementation of certain fees, and stage the implementation of certain fees. City Code Chapter 3.56.050 provides for automatic annual (July 1) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. Those fees which a developer elects to defer shall be subject to the fees in effect at the time of development of a lot (issuance of building permit). The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(PW)**
17. The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with both the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the Director of Public Works. All street improvements shall be constructed to the satisfaction of the Director of Public Works. The timing of the improvements will be determined by the City. **(PW-MHMC 17.32.060)**
18. Prior to issuance of a building permit for The Institute building or obtaining final approval of the golf course, the following conditions shall be met:
 - a. Submit offsite improvement plans prepared by a licensed civil engineer to the Public Works Department that

EXHIBIT “A” – CONDITIONS OF APPROVAL

includes the following:

- i. Asphalt shoulder along entire frontage on Foothill Avenue.
 - ii. Widening of Foothill Avenue near entrance of proposed project to include an acceleration-deceleration lane.
 - iii. Drainage improvements along Foothill Avenue to be approved by the Director of Public Works.
 - b. Submit on-site grading plans for review and approval including storm water retention plans and calculations in accordance with City Standards. **(PW)**
19. The applicant, at his or her expense, shall have a registered civil engineer prepare a complete sewer system capacity study of the on- and off-site sewer system which will service the project (both upstream and downstream). The study shall meet the approval of the Director of Public Works. All needed improvements shall be installed by the applicant. No downstream overloading of existing sewer system will be permitted. **(PW-MHMC 17.32.090)**
20. The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on site. Collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye branches and laterals, and separate sewer taps to each lot. These are to be installed by the developer. **(PW-MHMC 17.32.020 C)**
21. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(PW-MHMC 13.24.080)**
22. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the Director of Public Works. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(PW-MHMC 17.32.090)**
23. Collection system shall be designed to be capable of handling a year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Whereas, on-site retention facilities shall be designed to a 100 year storm capacity. Items of construction shall include, but not be limited to Installation of storm line extension on site surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. **(PW-MHMC 17.32.080)**
24. Prior to issuance of a building permit, the applicant shall complete the following to the satisfaction of the Santa Clara Valley Water District and Director of Public Works:

EXHIBIT “A” – CONDITIONS OF APPROVAL

1. Storm drain calculations to determine detention pond sizing and operations.
 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 3. Storm Water Pollution Prevention Plan. **(PW)**
25. Since the developed portion of this site encompasses more than 1 acre, a Storm Water Pollution Prevention Plan (SWPPP) will be required as a provision of the state’s General National Pollutant Discharge Elimination System Storm Water Permit for Construction Activities. The SCVWD requests a copy of the SWPPP for their information (SCVWD). **(PW)**
26. The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the Director of Public Works. **(PW-MHMC 17.32.020 E.1)**
27. An industrial waste discharge permit is required from the Chemical Control Program prior to any industrial wastewater discharge (non-domestic) to the sanitary sewer system. The business owner/operator shall complete an owner/operator form to City of Gilroy, Attention Jonathan Crick, 7531 Rosanna Street, Gilroy, CA 95020. The permit shall be maintained and renewed as required. The pretreatment program shall issue the permit during the building final inspection process. **(PRTRT)**
28. All new non-residential buildings shall have a sewer test manhole installed on the property (see City Specifications) and in an area that can be readily accessed by an inspector, (minimum of one for each building). Show sewer test manholes on future plans. For tenants with industrial waste treatment systems, a separate sewer test manhole shall be required. **(PRTRT)**
29. All cooking and food preparation facilities shall be provided with a grease trap or clarifier, sized for the anticipated flows. No garbage disposals are allowed. Submit plans showing the details of the kitchen (e.g. equipment, fixtures, deep fryers, sinks, dishwasher, plumbing and sewer connections). See Chemical Control Grease Interceptor Policy Documents for sizing and type. **(PRTRT)**
30. Drain plumbing for the underground parking garage must be connected to an oil/water separator sized for anticipated flows by a professional engineer and connected to the sanitary sewer. **(PRTRT)**
31. Pool/spa wastewater shall be drained to a floor sink leading to the sanitary sewer. **(PRTRT)**
32. Landry wastewater plumbing shall be fitted with an easily accessible

EXHIBIT “A” – CONDITIONS OF APPROVAL

- simple screening device to remove hair and lint from wastewater (e.g. lint trap, removable screen, etc.) **(PRTRT)**
33. Ensure that the sanitary sewer manholes lids are properly labeled, “Sanitary Sewer,” and storm drain manholes lids are properly labeled “Storm Drain.” **(PRTRT)**
 34. Garbage dumpster areas that are covered my have a screened drain to an interceptor leading to public sewer. For all uncovered garbage areas and if a sewer drain is installed, the drain shall be screened and shall be fitted with a removable cap. The cap will be in place to prevent rainwater from entering the sewer system and can be removed during cleaning operations. **(PRTRT)**
 35. Vehicle washing or other washing operations that may generate oily residues shall be drained to a sand-oil water separator. Rainwater is prohibited from entering the separator. **(PRTRT)**
 36. Industrial Water Softening systems (resin cartridges) may not be regenerated on site. A cartridge change-out type system is permitted. **(PRTRT)**
 37. Inspections by a Chemical Control Inspector are required prior to final building/TI. Call 408.846.0436 at least 48 hours in advance to schedule an inspection with Jonathan Crick. **(PRTRT)**
 38. Required Fire Flow. Required fire flow for this project is 6,000 GPM at 20 psi residual pressure. As an automatic fire sprinkler system will be installed, the fire flow has been reduced by 75% establishing a required adjusted fire flow of 1,500 gpm (plus sprinkler system demand) at 20 psi residual pressure for 4 hours. Applicant must provide a 4 hour supply of water is system is not connected to municipal water supply. **(FIRE-UFC Appendix III-A)**
 39. Applicant is providing pumps with a backup generator to obtain the required fire flow. The fire flow must be tested and accepted in the generator mode prior to the start of combustible construction. **(FIRE)**
 40. Final building plans shall show a maximum 5% slope for fire department turn around at the rear of the building. **(FIRE)**
 41. Final building plans shall indicate that the bridge across the access road will be of combustible construction. **(FIRE)**
 42. Final building plans shall delineate the access road from Foothill Road to the conference center parking lot. **(FIRE)**
 43. The applicant shall comply with applicable provisions of the City's building security ordinance. Exterior lighting shall comply with criteria specified in the Design Review Ordinance. **(POLICE-MHMC 18.74.370)**

EXHIBIT “A” – CONDITIONS OF APPROVAL

44. Where electronic security gates are provided to a development, a voice intercom or phone and electric gate control shall be provided. Gate location shall be designed to provide adequate area for turn around of vehicles. **(POLICE)**
45. All exterior transoms, glass skylights, and other openings of glass which are accessible from any surface on the premises shall be constructed of burglary- resistant glass or equally resistant glasslike material or secured on the inside with the following protective devices:
 - Iron bars of at least one-half (½) inch round or one (1) inch x one-quarter (1/4) inch flat steel material no more than five (5) inches apart and securely fastened; or

Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches secured with non-removable type screws. **(POLICE-MHMC 15.40.250)**
46. All hatchway openings shall be secured with the following protective devices:
 - If the hatchway is of wooden material, it shall be covered on the inside with at least sixteen (16) gauge sheet steel, or its equivalent, attached with screws.
 - The hatchway shall be secured from the outside with a slide bar or slide bolt with a minimum of one (1) inch throw. The use of a crossbar or padlock must be approved by the Fire Department.
 - Outside hinges on all hatchway openings shall be provided with non-removable pins using pin-type hinges. **(POLICE-MHMC 15.40.280)**
47. All air duct or air vent openings exceeding eight (8) inches x twelve (12) inches on the roof or exterior walls of any building shall be secured by covering the same with either of the following:
 - Iron bars of at least one-half (½) inch round or one (1) inch x one-quarter (1/4) inch flat steel material, spaced no more than five (5) inches apart and securely fastened; or
 - Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches and secured with non-removable type screws.
 - If the barrier is on the outside, it shall be secured with galvanized round-head through bolts of at least three-eighths (3/8) inch diameter on the outside. **(POLICE-MHMC 15.40.290)**
48. Prior to final inspection, the applicant shall contact Morgan Hill Post Office regarding delivery of mail. **(PO)**
49. All of the applicable conditions imposed by the City Council as part of Ordinance No. 1687 shall be in full effect. **(PLNG)**



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 19, 2006*

GPA 01-09: CITY OF MORGAN HILL, ADOPTION OF HOUSING ELEMENT UPDATE

RECOMMENDED ACTIONS:

1. Open/close Public Hearing
2. Adopt Negative Declaration
3. Adopt Resolution

EXECUTIVE SUMMARY: State law required the City update its Housing Element for the period 1999 through 2006. That update was initiated in 2001 using a Council-appointed advisory committee representing a variety of housing interests. Council member Carr chaired that committee. The State Department of Housing and Community Development (HCD) reviewed the draft Element and recommended only minor changes to comply with State requirements. However, HCD indicated the Element could not be found to comply with State law unless the City could produce the number of housing units assigned to it by ABAG (2484 units). The declining number of units that could be approved annually under Measure P prevented the City from meeting that target. With passage of Measure C in 2004, the number of units that could be allocated annually increased sufficiently to allow the City to meet the ABAG target. As a result, the draft Housing Element has been modified to address the comments received from HCD and updated to comply with amendments to State law that were enacted subsequent to the drafting of the Element.

Attached to this staff report is the draft Housing Element, including Appendix B, the Housing Needs Assessment. Major sections of the Element are devoted to documenting compliance of the new Element with other portions of the General Plan (pages 8-19), describing the achievements under the current Housing Element (pages 20-35) and defining new goals, policies and actions of the Element (pages 36-53). Appendix B, the Housing Needs Assessment, provides background information on the housing needs and conditions in the City in order to prepare goals and policies that will adequately meet the needs of the community.

Most of the Goals, Policies and Actions of the current Element continue to reflect City housing policy and have not been substantively changed in the draft Element. "Objectives" in the current Element have been eliminated as they are inconsistent with the format of other elements of the General Plan. Several of the existing Policies and Actions have been eliminated in the draft Element as they have been accomplished, were found to be ineffective or are no longer relevant. The rationale for their elimination is included in the Evaluation of Achievements section of the draft Element. No new Goals are proposed. Several new Policies and Actions are included. They are shown in italicized text in the draft Element for ease of identification.

The Planning Commission reviewed the draft Housing Element on June 27 and July 11. The Commission recommends City Council adoption of the updated Element. The attached staff reports to the Commission provide additional background information regarding the draft Element. The approval resolution would authorize staff to make additional changes to Appendix B, the Housing Needs Assessment, without further review by the Council, as Appendix B simply presents factual information and data and does not include policy. Refinements to Appendix B would be done, as needed, to ensure adequate information enables HCD certification of the Element.

FISCAL IMPACT: none

Attachments: Negative Declaration
Resolution of Approval
Draft Housing Element and Appendix B, the Draft Housing Needs Assessment
June 27 and July 11 Planning Commission Staff Reports

Agenda Item # 22

Prepared By:

Project Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN UPDATE OF THE HOUSING ELEMENT OF THE GENERAL PLAN, APPLICATION GPA 01-09

WHEREAS, such request was considered by the City Council at their regular meeting of July 19, 2006, at which time the City Council approved General Plan Amendment Application GPA 01-09; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE
AS FOLLOWS:**

SECTION 1. The proposed Housing Element update is consistent with other elements of the General Plan.

SECTION 2. An environmental assessment has been prepared for this application and is deemed complete, correct and adequate in accordance with state and local environmental guidelines. Based upon said study, a Negative Declaration is hereby adopted.

SECTION 3. The proposed update to the Housing Element policy document as presented to the City Council on this date is hereby approved and it shall replace the current Housing Element.

SECTION 4. Amendments to the Appendices of the Housing Element are hereby approved and the City Council also hereby authorizes staff to modify or supplement Appendix B Needs Assessment information without further review by the City Council, as the Needs Assessment contains factual information and data and does not include policies or actions, and the data and information may be refined as determined necessary by staff in order to ensure accurate and adequate information for HCD certification of the Housing Element as being in substantial conformance with state law.

SECTION 5. The Goals, Policies and Actions of the updated Element are to be inserted into the General Plan policy document.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the Day of July, 2006 by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

∞ CERTIFICATION ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on July , 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL REPORT

MEETING DATE: *July 19, 2006*

CITY MANAGER'S AMENDED AND RESTATED EMPLOYMENT AGREEMENT

RECOMMENDED ACTION(S):

1. Approve the Amended and Restated Employment Agreement between the City of Morgan Hill and J. Edward Tewes.
2. Authorize the Mayor to execute the agreement on behalf of the City.
3. Appropriate an additional \$9,000 for City Manager's Office Budget.

EXECUTIVE SUMMARY:

Since the current City Manager, Ed Tewes, was first hired by the City on January 6, 2000, there have been a series of employment agreements and amendments to those agreements between Mr. Tewes and the City setting forth the terms and conditions of that employment. This proposed agreement is the latest in that series of agreements. Since this would be the third amendment to the third employment agreement, it is proposed that a restated agreement be approved so all parties are clear as to the terms and conditions of the agreement.

After a review of Mr. Tewes' performance for 2005, the City Council has determined that it is very pleased with Mr. Tewes' excellent performance. The City Council ad hoc committee of Mayor Kennedy and Councilman Tate therefore recommend a merit increase and other benefits as described in the proposed restated agreement and as highlighted below.

Consistent with the past arrangement, the agreement has a "rolling" two-year term. The agreement before the City Council today expires on June 30, 2008. Unless by April 1, 2007 the Council notifies Mr. Tewes that it does not want the agreement to be further extended, the agreement will be automatically extended for an additional year (to June 30, 2009) as of July 1, 2007. That process continues for each subsequent year. Additionally, the City Council has the right to terminate the agreement at any time upon 30 days notice; however, such a termination obligates the City to pay Mr. Tewes a severance package equal to one year's salary and benefits. The foregoing provisions have been a part of Mr. Tewes employment agreement from the onset of his employment with the City.

There are two primary changes being recommended in this restated agreement. First, the base annual salary increases to \$159,300. This amount reflects a \$4,800 merit increase, or 3.1%. The last merit increase awarded to the City Manager was in September 2002. The agreement does include an annual CPI adjustment (not a new term of the agreement) effective July 1, 2006 (which will be determined based on data not yet available). Second, there is a provision that if Mr. Tewes is still employed with the City on July 1, 2007, the City will: (a) reduce by \$5,000 the principal balance on a loan it provided for Mr. Tewes to relocate to Morgan Hill; and (b) enable Mr. Tewes to further reduce that loan balance by "cashing in" up to 100 hours of his accrued administrative leave. The agreement also provides \$2,000 every two years for personal acquisition of computer hardware and software to facilitate an out-of-office connection to City Hall.

FISCAL IMPACT:

The restated agreement will require an additional \$9,000 appropriation which will be paid from redevelopment agency and general funds.

Agenda Item #

Prepared By:

Mayor Dennis Kennedy

Steve Tate, Councilman

AMENDED AND RESTATED
EMPLOYMENT AGREEMENT BETWEEN
CITY OF MORGAN HILL AND J. EDWARD TEWES

This Amended and Restated Employment Agreement ("Agreement") is entered into this 19th day of July, 2006, by the City of Morgan Hill, a municipal corporation ("City") and J. Edward Tewes, an individual ("Tewes").

RECITALS

- A. The City first entered into an employment agreement with Tewes on January 6, 2000, naming Tewes Interim City Manager. On July 7, 2000, the parties entered into a new agreement naming Tewes as the City Manager. Subsequently, on September 5, 2001, the City Council approved another agreement continuing Tewes services as City Manager. Subsequently, the parties entered into a new employment agreement with Tewes dated September 27, 2002, which was subsequently amended on April 17, 2003, and May 5, 2004.
- B. The parties now desire to further amend the employment agreement and to restate its terms in full in this Amended and Restated Employment Agreement.
- C. At a duly noticed public meeting, the City Council approved this Agreement on July 19, 2006.

AGREEMENT

- 1. **Parties:** The parties to this Agreement are the CITY OF MORGAN HILL ("CITY") and J. EDWARD TEWES ("TEWES").
- 2. **Purpose:** The purpose of this Agreement is to provide for the employment of TEWES as City Manager of CITY, as currently provided by Title 2, Chapter 2.08 of the Municipal Code of the City of Morgan Hill.
- 3. **Duties:** CITY hereby agrees to employ TEWES to perform the functions and duties of City Manager for the CITY and Executive Director of the Redevelopment Agency ("RDA") as specified in the Municipal Code of the City of Morgan Hill, the Job Description, and any other applicable Ordinances, Resolutions or Policies, and to perform such other legally permissible and proper duties and functions as the CITY shall from time-to-time assign. TEWES agrees that, to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this Agreement.

4. Term of Agreement:

- 4.1 TEWES agrees to remain in the exclusive employ of the CITY until June 30, 2008, and neither to accept other employment nor become employed by another employer until such termination date, unless such termination date is modified as provided hereafter.
- 4.2 The term "exclusive employ of the CITY" shall not be construed to preclude occasional teaching, writing, or military service performed by TEWES as long as it does not conflict with his primary responsibilities as City Manager and Executive Director described in this Agreement. Also, CITY and TEWES recognize the value of participation in the City Manager's Department and other League of California Cities' activities, and in the California Redevelopment Association, and that speaking requests and teaching are valuable resources to the CITY. CITY may permit consulting services to other entities upon prior approval of the City Council.
- 4.3 On July 1st of each year of this Agreement (commencing July 1, 2007), the termination date of this Agreement (set forth in Section 4.1 above) shall be automatically extended for an additional one-year period unless by the preceding April 1st the CITY provides written notice to TEWES of its determination to not extend the term. In the event of such written notice, the termination date of this Agreement shall be on June 30th of the following calendar year, fifteen (15) months subsequent to the notice.

5. Separation from Employment:

- 5.1 The City Council may, subject to provisions set out below, terminate the services of TEWES at any time, it being expressly understood and agreed between the parties that TEWES serves as an at-will employee of the City Council. CITY must provide TEWES with thirty (30) days written notice prior to separation from employment. CITY may not give notice of separation from employment to TEWES until sixty (60) days after a Mayoral or Council Member election. The intent of this time period is to allow the new City Council to have adequate time to review the City Manager's performance.
- 5.2 In the event of TEWES separation from employment in accordance with Section 5.1, while TEWES is still willing and able to perform the duties of City Manager, TEWES shall be entitled to receive compensation, consisting of a lump-sum payment of twelve (12) months of base salary and benefits ("Severance Payment").

The Severance Payment shall include all benefits payable to or on behalf of TEWES with the exception of vacation not yet accrued as of the date of

separation. Both salary and benefits shall be computed as of the rates in effect as of the date of separation from employment.

The Severance Payment will release CITY from any further obligations under this Agreement, and any claims of any nature that TEWES might have against the CITY by virtue of his employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, TEWES agrees to execute and deliver to CITY a release releasing CITY of all claims that TEWES may have against CITY. In return for such Severance Payment, TEWES agrees to be available for consultation and assistance to the incoming acting, interim or permanent City Manager.

TEWES shall not be entitled to the Severance Payment in the following events:

- 5.2.1 CITY elects not to renew this Agreement pursuant to Section 4.3; or
- 5.2.2 TEWES is terminated because of his conviction of a felony or misdemeanor involving moral turpitude, or is convicted of any illegal act involving personal gain to himself.
- 5.3 TEWES may resign at any time from his position with the CITY provided that he gives the CITY sixty (60) days' advance written notice. Should TEWES not provide the CITY with sixty (60) days' written notice, he shall not be entitled to cashout of any benefit other than as required by law.
- 6. **Disability:** If TEWES is permanently disabled or is otherwise unable to perform the full range of the essential functions of his position because of sickness, accident, injury, mental incapacity or other health reasons for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave, the CITY shall have the option to terminate this Agreement pursuant to Section 5.1.
- 7. **Compensation:**
 - 7.1 Effective January 1, 2006, CITY agrees to pay TEWES for his services rendered pursuant hereto an annual salary of One Hundred Fifty-Nine Thousand Three Hundred Dollars (\$159,300.00) ("Base Salary") payable at the same time and in the same manner as other employees of the CITY are paid. The City Council, in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to TEWES during the term of this Agreement.
 - 7.2 CITY agrees to provide TEWES a Five Hundred Dollar (\$500.00) per month car allowance.

- 7.3 Except as otherwise provided in this Agreement, TEWES shall receive an annual cost-of-living adjustment in his Base Salary, beginning July 1, 2006, equal to the percentage increase in the San Francisco-Oakland/San Jose Urban Wage Earner Index, Base rate index for the one year period ending on June 30th of each year of this Agreement.
- 7.4 TEWES shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the City's Management salary resolution.
- 7.5 In order to encourage and facilitate TEWES working at home on CITY administrative and redevelopment work during evenings and weekends, CITY will reimburse TEWES for computer equipment, including both hardware and software. The reimbursement shall not exceed \$2,000 every two fiscal years commencing July 1, 2006.
- 7.6 During the term of this Agreement, CITY shall pay on behalf of TEWES the maximum amount allowed under federal tax law into the CITY's deferred compensation plans. TEWES may apportion the CITY's contribution between the CITY's plans as he desires. Payments shall be made on the same schedule as salary payments.

8. Relocation and Housing Assistance:

8.1 Housing Assistance:

- 8.1.1 Housing Allowance. CITY shall pay to TEWES Seven Hundred and Fifty Dollars (\$750.00) per month as a housing allowance.
- 8.1.2 Loan to TEWES. CITY loaned TEWES Four Hundred Seventy Five Thousand Dollars (\$475,000.00) to enable TEWES to purchase a residence and property ("Property") in Morgan Hill. Said loan is evidenced by a Promissory Note made by TEWES payable to the CITY and secured by a First Deed of Trust on the Property. Through September 28, 2007, the principal amount of the loan bears interest at four percent (4%) per annum; after September 28, 2007, the interest rate shall increase to five and six-tenths percent (5.6%) per annum until the loan is paid in full. Principal and interest are amortized over a thirty (30) year period payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due and payable on September 28, 2030. The loan may be pre-paid at any time without penalty. TEWES shall be required to pay the entire balance owing on the Promissory Note within twelve (12) months following any separation from employment pursuant to this Agreement. TEWES shall not cause, suffer or permit any encumbrance against this Property.

8.1.3 Longevity Benefit. In consideration of TEWES' past performance and as an added incentive to retain his continuing service to the CITY, the City Council agrees to reduce the principal balance of the Promissory Note described in Section 8.1.2 by Five Thousand Dollars (\$5,000.00) if TEWES is still employed by the CITY as City Manager and Agency Executive Director as of July 1, 2007. Additionally, at any time after July 1, 2007, TEWES may utilize up to one hundred (100) hours of his accrued Administrative Leave (described in Section 10 below) to reduce the outstanding principal balance of the Promissory Note. If TEWES elects to so utilize his Administrative Leave, the loan will be reduced by an amount calculated as follows: the number of hours being eliminated from TEWES' Administrative Leave account balance shall be multiplied by TEWES' then current hourly rate of pay. The then current hourly rate of pay shall be determined by dividing TEWES' then current Base Salary (set forth in Section 7.1 as modified by Section 7.3) by 2,080 hours (40 hours times 52 weeks). TEWES shall only be entitled to make the election to exchange up to 100 hours of Administrative Leave in this manner once. If TEWES makes the election described in this Section utilizing less than 100 hours of Administrative Leave, the remaining balance shall be available for his continued use as administrative leave.

8.2 Mortgage, Taxes, Insurance, Homeowner Fee. During the term of this Agreement, TEWES shall pay in a timely manner the obligation secured by the First Deed of Trust described above. Unless the Homeowners Association of the Property, if any, maintains fire and hazard insurance on the Property, TEWES shall obtain and keep in force policies of fire and hazard insurance with limits of not less than the replacement value of the Property naming both CITY and TEWES as insured parties. All taxes assessed against the Property and the cost of maintaining the policies of fire and hazard insurance shall be paid in a timely basis by TEWES. In addition, TEWES shall obtain and maintain earthquake insurance on the Property. The parties agree that TEWES shall claim the deductions for property taxes and interest for state and federal income tax purposes to the extent paid by him and that CITY shall not claim any of said expenses for tax purposes.

8.3 Maintenance and Improvements. TEWES shall maintain the Property, at his sole expense, in good and habitable condition, reasonable wear and tear excepted. TEWES may make such improvements to the home as he deems beneficial.

9. Performance Evaluation:

9.1 The City Council shall review and evaluate the performance of TEWES at least annually and shall meet with TEWES to discuss the evaluation on or before July 2 of each year. Said review and evaluation shall be in

accordance with a process developed jointly by CITY and TEWES, which may be modified by mutual agreement. This evaluation shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law, or through some other mutually acceptable format. The parties agree that the primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and to provide an opportunity for TEWES to take affirmative action to address weaknesses and areas needing improvement. TEWES shall be provided with a summary written statement of the findings of the City Council, and he shall be provided an opportunity to discuss his evaluation with the City Council.

- 9.2 Annually, the City Council, in consultation with TEWES, shall define goals and performance objectives for the City Manager which they determine to be necessary for the proper operation of the City.
10. **Hours of Work, Administrative Leave:** It is recognized that TEWES must devote a great deal of time outside of normal working hours to the business of the CITY, and to that end, TEWES is granted annual Administrative Leave, which may be taken at his discretion. This amount is given in lieu of, and not in addition to, any amount of administrative time granted to other managers in the City. Effective July 1, 2006, TEWES is granted one hundred twenty (120) hours for the 2006-2007 fiscal year. Thereafter, on each July 1, the annual Administrative Leave shall be increased by eight (8) hours per year. The Administrative Leave may be further increased by the City Council at any time at their discretion at a publicly noticed meeting. The Administrative Leave balance may be accrued from year to year. This amount may be cashed out, at TEWES' option, in accordance with the regulations governing the managers' administrative leave program.
11. **Sick Leave, Holidays, Vacation, Leave Without Pay and Bereavement Leave, Sick Leave Buy Out:** TEWES shall be entitled to accrue, and to have credited to his personal account, vacation and sick leave as provided to department directors. TEWES shall be entitled to holiday, leave without pay, bereavement leave and sick leave buy-out the same as other management employees of the CITY. TEWES shall be entitled to unlimited accrual of vacation time to the extent such benefit is offered to other management employees. Calculation of sick leave and vacation accrual shall begin as if TEWES was employed by the CITY effective January 1, 2000.
12. **Disability, Health, Life Insurance and Medicare:**
- 12.1 The CITY agrees to put in force and make 100 percent of the required premium payments for TEWES for insurance policies of disability income benefits, life, and accident.

- 12.1.1 Said disability income plan shall have a ninety (90) day waiting period and shall provide a minimum of two-thirds (2/3) salary following such waiting period.
- 12.1.2 Said life insurance shall be double indemnity term policy in a minimum amount of \$125,000.
- 12.2 The CITY agrees to pay medical, dental, and vision insurance benefits to TEWES and his dependents as he may determine in the same amount as provided for the "A" group on the CITY's then current Management salary resolution. In addition, the CITY shall pay an additional One Hundred Dollars (\$100.00) per month to TEWES to offset medical expenses. In the event the deferred compensation described in Section 7.6 and that from medical described in this Section exceeds the Federal deferred compensation maximum, TEWES shall have the compensation paid in a taxable form.
13. **Retirement:** CITY agrees to pay the full personal retirement contribution of both TEWES and CITY.
14. **Professional Development:** The CITY hereby agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of TEWES for professional development and official travel, meetings and occasions adequate to continue the professional development of the City Manager and to adequately pursue necessary official and other functions of the CITY, including, but not limited to, the Annual Conference of the League of California Cities, the Spring City Managers' Conference, the Annual Conference of the California Redevelopment Association, and ICMA. Travel and conference expenses shall be reimbursed for reasonable expenses only, and in accordance with the City's standard policies governing travel and conference expense reimbursement.
- The CITY agrees to reimburse TEWES for tuition, fees, books, software, and related educational expenses for professional development.
15. **Non-Liability of Officials and Employees:** No official or employee of the CITY shall be personally liable for any default or liability under this Agreement.
16. **Bonding:** CITY shall bear the full cost of any fidelity or other bonds required of TEWES under any law or ordinance.
17. **Other Terms and Conditions of Employment:**
- 17.1 The City Council, in conjunction with TEWES, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of TEWES, provided such terms and conditions are not

inconsistent with or conflict with the provisions of this Agreement or other applicable law.

- 17.2 All provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the City Manager as they do other employees of the CITY in addition to said benefits enumerated specifically for the benefit of TEWES except as herein provided.
- 17.3 At any time after January 1, 2007, TEWES may submit a proposal for City Council consideration for an extended paid leave of absence ("Sabbatical"). It is expected that the Sabbatical proposal would define the scope and conditions, including the benefits, of the activity to the City as well as a proposal for coverage of City Manager/Executive Director functions during TEWES requested absence. Granting of a proposed Sabbatical is at the City Council's sole discretion.
18. **No Reduction in Benefits:** The City shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to TEWES.
19. **Notice:** Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.
- 19.1 Notice to TEWES shall be sent to: 540 Via Sorrento
Morgan Hill CA 95037
- 19.2 Notice to CITY shall be sent to: Mayor
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
20. **General Provisions:**
- 20.1 The text herein shall constitute the entire agreement between the parties.
- 20.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of TEWES.

- 20.3 This Amended and Restated Agreement is effective as of the date set forth in the first paragraph. This Agreement supersedes any other contract or agreement between the CITY and TEWES.
- 20.4 If any provision, or any portion therefore, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be effective, and shall remain in full force and effect.
- 20.5 The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
- 20.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous Agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and TEWES.
- 20.7 This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be interpreted as though prepared by both parties.

CITY OF MORGAN HILL

Date: _____

By: _____
Mayor

Date: _____

By: _____
J. Edward Tewes

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

AGENDA BUDGET SCORECARD

FISCAL 2006/07

Adjustment #:

002

FUND:

DEPARTMENT:

OBJECT

PROJECT NUMBER:

010 General Fund
2100 City Manager
41100 Salaries - General
000000 -

AGENDA DATE:

AGENDA ITEM TITLE:

07/19/06
City Manager's Amended and Restated Employment Agreement

	07/01/06 BEGINNING FUND BALANCE	ESTIMATED REVENUES	APPROPRI- ATIONS	06/30/07 ENDING FUND BALANCE
ORIGINAL BUDGET	9,332,666.00	22,116,684.00	22,952,679.00	8,496,671.00
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	4,500.00	(4,500.00)
RESULT OF RECOMMENDED ACTION	<u>9,332,666.00</u>	<u>22,116,684.00</u>	<u>22,957,179.00</u>	<u>8,492,171.00</u>

AGENDA BUDGET SCORECARD

FISCAL 2006/07

Adjustment #:

003

FUND:

DEPARTMENT:

OBJECT

PROJECT NUMBER:

317 RDA
7000 BAHS Administration
41100 Salaries - General
000000 -

AGENDA DATE:

AGENDA ITEM TITLE:

07/19/06
City Manager's Amended and Restated Employment Agreement

	07/01/06 BEGINNING FUND BALANCE	ESTIMATED REVENUES	APPROPRI- ATIONS	06/30/07 ENDING FUND BALANCE
ORIGINAL BUDGET	1,685,794.00	20,749,555.00	22,295,027.00	140,322.00
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	4,500.00	(4,500.00)
RESULT OF RECOMMENDED ACTION	<u>1,685,794.00</u>	<u>20,749,555.00</u>	<u>22,299,527.00</u>	<u>135,822.00</u>